



**DEPARTMENT OF
TRANSPORTATION**

DEPARTMENT OF TRANSPORTATION

**NOTICE TO CONTRACTORS,
PROPOSAL, SPECIAL PROVISIONS,
CONTRACT AND CONTRACT BOND
FOR**

**REPLACE STRUCTURES (237' PRESTRESSED GIRDER,
198' PRESTRESSED GIRDER, PRECAST OR CIP RCBC'S &
MSE WIRE WALL) & APPROACH GRADING**

FEDERAL

PROJECT NO.

**NH-PS 0012(187)106
(PCN 04FL)**

US HIGHWAY 12

IN CORSON COUNTY

NOTICE TO ALL BIDDERS

TO REPORT BID RIGGING ACTIVITIES, CALL: 1-800-424-9071

THE U.S. DEPARTMENT OF TRANSPORTATION (DOT) OPERATES THE ABOVE TOLL-FREE "HOTLINE" MONDAY THROUGH FRIDAY, 8:00 A.M. TO 5:00 P.M., EASTERN TIME. ANYONE WITH KNOWLEDGE OF POSSIBLE BID RIGGING, BIDDER COLLUSION, OR OTHER FRAUDULENT ACTIVITIES SHOULD USE THE "HOTLINE" TO REPORT SUCH ACTIVITIES.

THE "HOTLINE" IS PART OF THE DOT'S CONTINUING EFFORT TO IDENTIFY AND INVESTIGATE HIGHWAY CONSTRUCTION CONTRACT FRAUD AND ABUSE AND IS OPERATED UNDER THE DIRECTION OF THE DOT INSPECTOR GENERAL.

ALL INFORMATION WILL BE TREATED CONFIDENTIALLY, AND CALLER ANONYMITY WILL BE RESPECTED.

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PLANS, PROPOSALS AND ADDENDA

AFTER AWARD OF CONTRACT, THE LOW BIDDER WILL RECEIVE TEN (10) COMPLIMENTARY SETS OF PLANS, PROPOSALS, PROJECT Q & A FORUM, AND ADDENDA FOR FIELD AND OFFICE USE. AN ELECTRONIC COPY WILL ALSO BE PROVIDED. ANY ADDITIONAL COPIES REQUIRED WILL BE THE RESPONSIBILITY OF THE CONTRACTOR.

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NOTICE TO CONTRACTORS

Bid proposals for this project will be prepared, transmitted, and received electronically by the South Dakota Department of Transportation (SDDOT) via the South Dakota Electronic Bid System until 10 A.M. Central time, on December 1, 2021, at which time the SDDOT will open bids. All bids will be checked for qualifications with results posted on the SDDOT website. The South Dakota Transportation Commission will consider all bids at a scheduled Commission meeting.

The work for which proposals are hereby requested is to be completed within the following requirement(s):

FIELD WORK COMPLETION: **OCTOBER 27, 2023**

CONSTRUCTION SCHEDULE / PROJECT MANAGEMENT:

The project category is Category II

The project type is Structural

The geographic zone is Zone 1

THE DBE GOAL FOR THIS PROJECT IS: **NOT SPECIFIED**

WORK TYPE FOR THIS PROJECT IS: **WORK TYPE 1 OR WORK TYPE 7**

Bidding package for the work may be obtained at:

<http://apps.sd.gov/hc65bidletting/ebslettings1.aspx#no-back-button>

An electronic version of the most recent version of the South Dakota Standard Specifications for Roads and Bridges may be obtained at <https://dot.sd.gov/doing-business/contractors/standard-specifications/2015-standard-specifications>

The electronic bid proposal must be submitted by a valid bidder as designated by their company's <https://apps.sd.gov/HC65C2C/EBS/BidAdminAuthorizationForm.pdf>. A bidding administrator will have privileges in the SDEBS to prepare bids, submit bids, and authorize additional company employees to prepare and submit bids. Additionally, a bidding administrator will be responsible for maintaining the list of authorized bidders for the company and will have the ability to add employees, remove employees, and set-up bidder identifications and passwords within the SDEBS. Bidding Administrator authorization will remain in full force and effect until written notice of termination of this authorization is sent by an Officer of the company and received by the Department.

A bidder identification and password, coupled with a company identification previously assigned by the Department, will serve as authentication that an individual is a valid bidder for the company.

Contact information to schedule a preconstruction meeting prior to commencing with the work on this project.

John Villbrandt
PO Box 488
Mobridge, SD 57601-0488
Phone: 605/845-3844

PROPOSAL

Revised 8/10/11

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION, STATE OF SOUTH DAKOTA:

Ladies / Gentlemen:

The following proposal is made on behalf of the undersigned and no others. It is in all respects fair and is made without collusion on the part of any other person, firm or corporation not appearing in the signature to this proposal.

The undersigned certifies that she / he has carefully examined the plans listed herein, the Specifications hereinbefore referred to, the Special Provisions and the form of contract, both of which are attached hereto. The undersigned further certifies that she / he has personally inspected the actual location of the work, together with the local sources of supply and that she / he understands the conditions under which the work is to be performed, or, that if she / he has not so inspected the actual location of the work, that she / he waives all right to plea any misunderstanding regarding the location of the work or the conditions peculiar to the same.

On the basis of the plans, Specifications, Special Provisions and form of contract proposed for use, the undersigned proposes to furnish all necessary machinery, tools, apparatus and other means of construction, to do all the work and furnish all the materials in the manner specified, to finish the entire project **within the contract time specified** and to accept as full compensation therefore the amount of the summation of the products of the actual quantities, as finally determined, multiplied by the unit prices bid.

The undersigned understands that the quantities as shown in the Bid Schedule are subject to increase or decrease, and hereby proposes to perform all quantities of work, as increased or decreased, in accordance with the provisions of the specifications, and subject to any applicable special provisions, and at the unit prices bid.

The undersigned understands that the "Total or Gross Amount Bid" as immediately hereinbefore set forth is not the final amount which will be paid if this proposal is accepted and the work done, but that such amount is computed for the purpose of comparison of the bids submitted and the determination of the amount of the performance bond.

The undersigned further proposes to perform all extra work that may be required on the basis provided in the specifications, and to give such work personal attention in order to see that it is economically performed.

The undersigned further proposes to both execute the contract agreement and to furnish a satisfactory performance bond, in accordance with the terms of the specifications, within twenty (20) calendar days after the date of Notice of Award from the South Dakota Department of Transportation that this proposal has been accepted.

CERTIFICATION REGARDING LOBBYING

I certify, to the best of my knowledge and belief, that: No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

REV 12/3/20

INDEX OF SPECIAL PROVISIONS

PROJECT NUMBER(S): NH-PS 0012(187)106 PCN: 04FL

TYPE OF WORK: REPLACE STRUCTURES (237' PRESTRESSED GIRDER, 198'
PRESTRESSED GIRDER, PRECAST OR CIP RCBC'S & MSE WIRE
WALL) & APPROACH GRADING

COUNTY: CORSON

The following clauses have been prepared subsequent to the Standard Specifications for Roads and Bridges and refer only to the above described improvement, for which the following Proposal is made.

The Contractor's attention is directed to the need for securing from the Department of Environment & Natural Resources, Foss Building, Pierre, South Dakota, permission to remove water from public sources (lakes, rivers, streams, etc.). The Contractor should make his request as early as possible after receiving his contract, and insofar as possible at least 30 days prior to the date that the water is to be used.

Ashley Glaspell is the official in charge of the Aberdeen Career Center for Corson County.

THE FOLLOWING ITEMS ARE INCLUDED IN THIS PROPOSAL FORM:

Special Provision for Contract Time, dated 10/20/21.

Special Provision for Subletting of Contract, dated 10/14/21.

Special Provision for Prosecution and Progress, dated 1/21/21.

Special Provision for Cooperation by Contractor and Department, dated 8/17/17.

Special Provision for On-The-Job Training Program, dated 3/10/16.

**Special Provision for Indian Employment and Contracting on the
Standing Rock Reservation, dated 11/4/21.**

**Special Provision Regarding Restricted Work at Drainage Crossings
or Wetlands, dated 11/4/21**

MCINTOSH STRUCTURE # 16-328-018, US DOT # 393936H, MP 862.75

**Special Provision Regarding Railroad Insurance Requirements and Working on
Railroad Property for Grade Separated Crossings with BNSF Railway Company,
dated 8/23/21.**

Exhibit "C" Contractor Requirements

Exhibit "C-1" Agreement Between BNSF Railway Company and the Contractor

Exhibit "F" BNSF Bridge Requirements

NOTE: The Contractor WILL NOT be granted permission to proceed with any work on Railroad Right-of-Way until he has been notified by the Railroad that the insurance has been approved and the insurances and certificates has been provided to the SDDOT area office.

MORRISTOWN STRUCTURE # 16-083-11, US DOT # 393956U, MP 887.91

Special Provision Regarding Railroad Insurance Requirements and Working on Railroad Property for Grade Separated Crossings with BNSF Railway Company, dated 8/23/21.

Exhibit "C" Contractor Requirements

Exhibit "C-1" Agreement Between BNSF Railway Company and the Contractor

Exhibit "F" BNSF Bridge Requirements

NOTE: The Contractor WILL NOT be granted permission to proceed with any work on Railroad Right-of-Way until he has been notified by the Railroad that the insurance has been approved and the insurances and certificates has been provided to the SDDOT area office.

Special Provision for Permanent Mechanically Stabilized Earth Wire Face Walls, dated 5/28/19.

Special Provision for Dynamic Pile Monitoring and Static Pile Load Testing, dated 10/29/21.

Special Provision for Concrete Penetrating Sealer, dated 2/22/10.

Special Provision for Asphalt Surface Treatment Design, dated 11/19/15.

Special Provision for Contractor Staking with Machine Control Grading Option, dated 11/3/21.

Agreement to Sell Materials (Eugene Geigle, Harvey C Vilhauer Trust and Beverly Vilhauer Trust, and Gene Kling).

List of Utilities.

Special Provision for Portland Cement, dated 12/3/20.

Special Provision for Prequalification of Bidders, dated 10/16/20.

Special Provision for Restriction of Boycott of Israel, dated 1/31/20.

Special Provision for South Dakota Electronic Bid System, dated 7/23/18.

Special Provision for Contractor Administered Preconstruction Meeting, dated 12/18/19.

Fuel Adjustment Affidavit, DOT form 208 dated 7/15.

Standard Title VI Assurance, dated 3/1/16.

Special Provision For Disadvantaged Business Enterprise, dated 8/14/18.

Special Provision For EEO Affirmative Action Requirements on Federal and Federal-aid Construction Contracts, dated 9/1/97.

Special Provision For Required Contract Provisions Federal-aid Construction Contracts, Form FHWA 1273 (Rev. May/1/12), dated 10/21/19.

Required Contract Provisions Federal-aid Construction Contracts, Form FHWA 1273 (Rev. 5/1/12).

Special Provision for Cargo Preference Act, dated 1/20/16.

Special Provision Regarding Minimum Wage on Federal-Aid Projects, dated 10/24/19.

Wage and Hour Division US Department of Labor Washington DC. - US Dept. of Labor Decision Number SD180001, dated 4/6/18.

Special Provision for Supplemental Specifications to 2015 Standard Specifications for Roads and Bridges, dated 11/20/19.

Special Provision for Errata to 2015 Standard Specifications for Roads and Bridges, dated 11/20/19.

Special Provision for Price Schedule for Miscellaneous Items, dated 10/7/20.

Special Provision Regarding Storm Water Discharge to Waters of the United States Within Indian Reservations, dated 5/3/13.

National Pollutant Discharge Elimination System General Permit for Discharges from Large and Small Construction Activities, dated 2/16/12.

http://www.epa.gov/npdes/pubs/cgp2012_finalpermit.pdf

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CONTRACT TIME**

**PROJECT NH PS 0012(187)106; PCN 04FL
CORSON COUNTY**

OCTOBER 20, 2021

June 16, 2023 Interim Completion Requirement

The Contractor will complete all work for the two new bridges, grading, surfacing, asphalt surface treatment with cover aggregate, guardrail installation, and permanent striping and will open US 12 to unimpeded through traffic by the June 16, 2023 interim completion date.

If the Contractor does not complete the work by the interim completion requirement, the Department will make a disincentive assessment in the amount of \$1000 per working day. A contract item for incentive/disincentive pay is included in the bid schedule for the Department's use in assessing disincentive. The Department will use a negative quantity of days for assessing disincentives. The Department will count working days in accordance with Section 8.6 C.

The Contractor may complete the removal the two bridges, seeding, erosion control, and any grading work remaining following the June 16, 2023 interim completion date.

Field Work Completion

The Contractor will complete the project by the October 27, 2023 field work completion date.

Time Extensions

The Contractor may request a time extension for the interim completion requirement and field work completion requirement. The Department will consider these time extension requests using the same considerations that apply when granting an extension of contract time under Section 8.7, except extra work or an increase in quantities will not qualify for an extension of time based solely on a proportional increase in the contract amount.

Failure to Complete on Time

The Contractor will complete all work on the project prior to the field work completion requirement. If the Contractor does not complete all work by the field work completion requirement, the Department will assess liquidated damages in accordance with Section 8.8. The Department will assess liquidated damages for each working day the work (project) is late until the Contractor completes all field work.

In the event the Contractor does not complete all field work on time, the Department will count working days in accordance with Section 8.6 C.

Expected Adverse Weather Days

The Department has provided Attachment 1 for information purposes only as a guide to bidders. Table 1 depicts the typical number of adverse weather days expected for any given month, based on historical records. The Department will consider this project a grading project in Zone 1.

The Department will consider expected adverse weather days cumulative in nature over the time period when the Contractor is actively pursuing completion of the work. The Department will not consider adverse weather days during an extended period of time when the Contractor is not pursuing completion of the work. When considering a time extension for interim completion or field work completion of the project, the Engineer will compare the total number of expected adverse weather days against the total number of actual adverse weather days for the time period during which the work was being completed.

* * * * *

ATTACHMENT 1

Figure A - Expected Adverse Weather Days for South Dakota

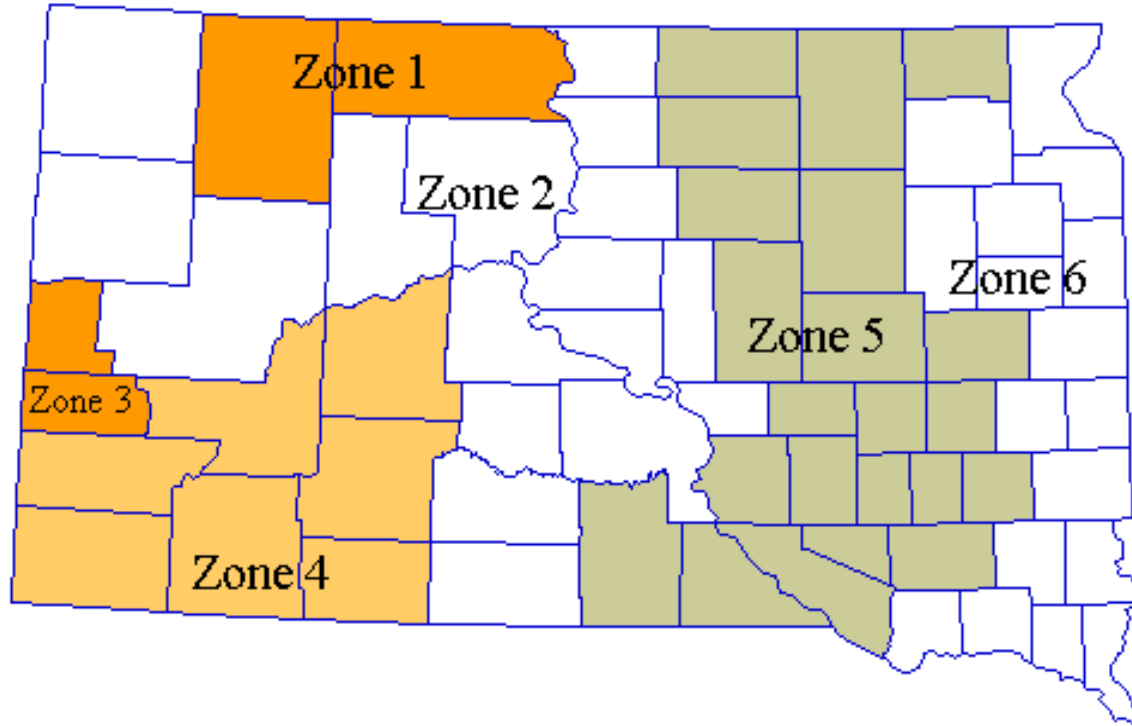


Table 1 - Expected Adverse Weather Days for South Dakota

	Grading Projects						Surfacing and Structural Projects					
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
Jan	18	18	16	16	22	24	18	18	15	16	21	23
Feb	19	18	12	14	19	21	19	18	12	14	19	21
Mar	12	10	9	8	11	13	12	10	9	8	10	12
Apr	6	5	8	5	6	6	5	4	6	4	4	4
May	6	6	8	6	6	6	5	5	6	4	4	5
Jun	7	6	7	6	7	8	5	5	5	4	5	6
Jul	5	5	6	5	6	7	4	4	5	3	4	5
Aug	4	4	5	4	5	6	3	3	4	3	4	4
Sep	3	3	4	3	4	5	2	2	3	2	3	4
Oct	4	3	5	3	4	4	3	3	4	2	3	3
Nov	11	9	8	7	10	12	11	9	8	7	10	11
Dec	21	19	15	14	20	22	21	19	15	14	20	22

NOTE: Includes Holidays and Weekends.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
SUBLETTING OF CONTRACT**

**PROJECT NH PS 0012(187)106; PCN 04FL
CORSON COUNTY**

OCTOBER 14, 2021

Delete the 2nd paragraph of Section 8.1 and replace with the following:

The Contractor may subcontract up to 70% of the original contract amount, based on the contract unit prices, but must perform not less than 30% of the total amount of the original contract with the Contractor's own organization.

* * * * *

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
PROSECUTION AND PROGRESS**

JANUARY 21, 2021

Delete Section 8.3 of the specifications and replace with the following:

8.3 PROSECUTION AND PROGRESS - The Contractor will include the proposed starting date with the signed contract.

The Contractor will provide sufficient materials, equipment, and labor to complete the project within the contract time set forth within the contract.

Should the Contractor discontinue the work for any reason, the Contractor will provide at least a 24-hour notice to the Engineer prior to resuming operations.

A construction schedule is required. The project category, project type, and project geographic zone are defined in the Notice to Contractors.

For the purpose of this specification, work activities will include all Contractor, subcontractor, and utility company work related to the successful completion of the project.

This work consists of scheduling and monitoring all construction work activities. The construction schedule is an integral part of the project. The construction schedule is used as a resource for the Contractor to monitor and manage work progress. The construction schedule is also used as a resource for the Department to monitor work progress and as a resource used in time extension determinations in accordance with Section 8.7 and this specification. The Contractor will ensure operations are conducted such that the construction schedule is adhered to by all contracting parties involved regardless of the amount of work subcontracted.

A. Project Categories:

- 1. Category I:** Represents the lowest level of the project ranking system with simple, low risk, short duration projects with minimal impacts on traffic.
 - a.** Types of projects typically include, but are not limited to, asphalt surface treatments, crack seals, rumble strip installation, bridge deck overlays, and other minor repair projects.

- b.** Construction schedule requirements for Category I projects are written narrative. The Department will also accept a Bar Chart Method (BCM), Critical Path Method (CPM), or Linear Schedule Method (LSM).
- 2. Category II:** Represents the medium level of the project ranking system with slightly complex projects that typically involve a limited number of linear, repetitive operations with typical project constraints and some traffic impact.
 - a.** Types of projects typically include, but are not limited to, asphalt concrete resurfacing, grading, shoulder widening, bridge replacement, concrete pavement repair, major bridge repair projects, and interstate reconstruction.
 - b.** Construction schedule requirements for Category II projects are BCM, CPM, or LSM.
- 3. Category III:** Represents the highest level of project ranking system with complex, high risk projects with major impacts on traffic and adjacent businesses. These projects may last for more than one construction season.
 - a.** Types of projects typically include, but are not limited to, urban reconstruction, and interstate interchanges.
 - b.** Construction schedule requirements for Category III projects are CPM or LSM.

B. General:

The following will apply to all scheduling methods:

The Contractor will submit a startup schedule or construction schedule to the Engineer prior to the scheduling of the preconstruction meeting.

For Category II and III projects, the Contractor may submit a startup schedule. The startup schedule must contain a detailed breakdown of all work activities for the first 15 working days from the start of work for Category II project or 30 working days from the start of work for a Category III projects. At a minimum, the startup schedule must meet the requirements of the BCM.

If the Contractor elects to submit a startup schedule, the Contractor will schedule a construction scheduling meeting between the Department and the Contractor at the time of submitting the startup schedule. The Contractor and Engineer will review the startup schedule and the proposed construction

schedule and collaborate to include all remaining work activities for the remainder of the project, or the season if the project is a multi-year project. For multi-year projects, the same submittal requirements and timelines will apply each year.

Work activities in the construction schedule will be in chronologic order.

The Contractor will include expected adverse weather days from the Expected Adverse Weather Days chart in Section 8.3 K. of this special provision in the construction schedule. The Contractor will also include an estimate of the duration of utility company work activities identified in the plans that impact the Contractor's critical path in the construction schedule.

The Engineer will accept or may suggest revisions to the construction schedule within 5 business days of the date of receiving the construction schedule. If the Engineer does not accept or does not provide suggested revisions to the construction schedule within 5 business days of receiving the construction schedule, or a longer timeframe if mutually agreed upon by the Contractor and the Engineer, the construction schedule as submitted will be the initial accepted construction schedule.

If revisions are needed prior to acceptance of the construction schedule, the Contractor will make the required revisions and submit the revised construction schedule to the Engineer within a mutually agreed upon amount of time. The Engineer will accept or may suggest further revisions to the revised construction schedule within 2 business days of the date of receiving the revised construction schedule.

Acceptance of the construction schedule by the Engineer does not modify the contract or constitute endorsement or validation by the Engineer of the Contractor's logic, activity durations, or assumptions in creating the schedule. Acceptance of the schedule also does not relieve the Contractor of the obligation to complete all work within the contract time completion requirements.

The Contractor will preface each construction schedule with the following information:

1. Project Number;
2. PCN;
3. Contractor;
4. Original contract time allowed including phase, interim, substantial, and field work completion requirement(s) specified;

5. Type of construction schedule (startup, construction, or update); and,
6. Date of the schedule (the date the schedule was updated to) as applicable by scheduling type.

C. Written Narrative: The written narrative consists of:

1. Estimated starting and completion dates of each work activity;
2. Description of work to be done within each work activity including the type and quantity of equipment and labor;
3. Description of the location on the project where each work activity occurs;
4. Description of planned production rates by major work activities (example: cubic yards of excavation per day/week);
5. Description of planned workdays per week, holidays, number of shifts per day, and number of hours per shift;
6. An estimate of any periods which a work activity is idle or partially idle including the beginning and end dates of the reduced production or idle timeframe;
7. Description of expected and critical delivery dates for equipment and materials that may affect timely completion of the project;
8. Description of critical completion dates for maintaining the construction schedule; and,
9. Identification of the vendor, supplier, subcontractor, or utility company to perform the work activity including stating all assumptions made by the Contractor in the scheduling of the subcontractor's, supplier's, or utility company's work.

D. Bar Chart Method (BCM): The BCM construction schedule consists of:

1. **Diagram:** The Contractor must show the following in the BCM diagram:
 - a. Planned start and completion dates for each work activity;
 - b. Define and relate principle and major work activities into manageable item with durations no longer than 15 working days;

- c. Work activities related to the procurement of critical (major) materials and articles of special manufacture in the order the work is to be performed;
- d. Contractor work activities related to the preparation and submission of working drawings, shop plans, and other data specified for review or approval by the Engineer and resubmittal, if required;
- e. Activities related to specified activities by the Department and third parties (including, but not limited to, review of working drawings and material quality, mix design, mix design verification, and compatibility test results from the Department's Central Materials Laboratory);
- f. Show all critical (major) work activities that are controlling factors in the completion of the work;
- g. Show the time needed to perform each work activity and the work activity's relationship in time to other work activities; and,
- h. Show the expected time to complete all work.

In addition, the Contractor will provide enough space for each work activity to permit 2 additional plots parallel to the original time span plot. The Contractor will use one spot for revision of the planned time span and one spot for showing the actual time span achieved.

- 2. **Written Narrative:** If all of the information required in Section 8.3 C. is shown in the BCM construction schedule, the Contractor will not be required to provide a written narrative. For those items not included in the diagram, the written narrative consists of the missing information required in Section 8.3 C.

E. Critical Path Method (CPM): The CPM construction schedule consists of:

- 1. **Diagram:** The Contractor must show the following in the CPM diagram:
 - a. Baseline start and baseline completion dates for each work activity;
 - b. Duration of each work activity (stated in working days with work activities of more than 15 working days in duration broken into two or more work activities distinguished by location or some other feature);
 - c. Completion requirement(s) specified in the contract as the only constraints in the schedule logic;

- d. Work activities related to the procurement of critical (major) materials and articles of special manufacture;
 - e. Contractor work activities related to the preparation and submission of working drawings, shop plans, and other data specified for review or approval by the Engineer and resubmittal, if required; and,
 - f. Activities related to specified activities by the Department and third parties (including, but not limited to, review of working drawings and material quality, mix design, mix design verification, and compatibility test results from the Department's Central Materials Laboratory).
2. **Written Narrative:** If all of the information required in Section 8.3 C. is shown in the CPM construction schedule, the Contractor will not be required to provide a written narrative. For those items not included in the diagram, the written narrative consists of the missing information required in Section 8.3 C.

F. Linear Schedule Method (LSM): The LSM construction schedule consists of:

1. **Diagram:** The Contractor must show the following in the LSM diagram:
- a. Planned start and completion dates for each work activity;
 - b. All work activities longer than 3 days in duration, or an alternate longer or shorter duration per work activity as mutually agreed upon by the Contractor and the Engineer;
 - c. Completion requirement(s) specified in the contract as the only constraints in the schedule logic;
 - d. Work activities related to the procurement of critical (major) materials and articles of special manufacture;
 - e. Contractor work activities related to the preparation and submission of working drawings, shop plans, and other data specified for review or approval by the Engineer and resubmittal, if required; and,
 - f. Department activities related to specified activities by the Department (including, but not limited to, review of shop drawings by the Department and material quality, mix design, mix design verification, and compatibility test results from the Department's Central Materials Laboratory) and third parties.
2. **Written Narrative:** If all of the information required in Section 8.3 C. is shown in the LSM construction schedule, the Contractor will not be required

to provide a written narrative. For those items not included in the diagram, the written narrative consists of the missing information required in Section 8.3 C.

G. Construction Schedule Updates: The construction schedule and all construction schedule updates are intended to be a project management tool for the Contractor, Contractor's staff, subcontractors, suppliers, Department, and any utility companies involved. The Contractor will regularly review and continually maintain the construction schedule to verify actual start dates, actual finish dates of work activities, remaining duration of uncompleted work activities, and any proposed logic or time estimate revisions based on work production. The Contractor will keep the Engineer informed of the current construction schedule and all logic changes. The construction schedule and all construction schedule updates will be discussed during the weekly meetings or at a frequency agreed upon by the Contractor and Engineer.

The Contractor will submit an updated construction schedule for acceptance by the Engineer at least every month or when any of the following conditions occur:

1. A delay of 5 working days or 7 calendar days, as governed by the contract time requirements of the contract, occurs in the completion of a critical (major) work activity or which causes a change in a critical work activity for BCM schedules, causes a change in the critical path for CPM schedules, or causes work activity lines to cross in LSM schedules;
2. The actual prosecution of the work is different from that represented on the current construction schedule;
3. There is an addition, deletion, or revision of work activities caused by a contract change order; or,
4. There is a change in the construction schedule logic.

The Contractor will include all requirements listed in Section 8.3 B.1-6 on the updated construction schedule and will provide a comparison of the initial/baseline schedule to the current schedule of project completion.

When the construction schedule is updated, the Contractor will move the actual lost days (adverse weather days and adverse weather recovery days) from where the expected adverse weather days were originally shown, in accordance with Section 8.3 B, to the date the lost day or days occurred in accordance with Section 8.3 H.

For utility company work activities previously identified in the baseline construction schedule in accordance with Section 8.3 B, the following shall apply:

When the construction schedule is updated, the Contractor will move utility company work activity durations from where the work activities were originally shown, in accordance with Section 8.3 B, to the dates the utility company work activities actually occurred. The Contractor will also include any known delays due to utility company work activities in the construction schedule updates by showing the date of the lost day or days to identify the delays and show the impact to the critical path in accordance with Section 8.3 H. The Contractor will also include documentation of any attempts made by the Contractor to mitigate the delays caused by utility company work activities.

For unexpected or unplanned work activities which become an impact to the critical path not previously identified in the initial/baseline construction schedule including, but not limited to; 1) known utility company work activities, 2) utility conflicts not identified in the plans, 3) differing site conditions, and 4) significant changes in the character of work the following shall apply:

For each occurrence of a delay, the Contractor will add a new work activity in the line below and linked to the controlling work activity for the duration of the delay. The Contractor will include supporting information to document the delay and efforts to mitigate the delay.

The Engineer will accept or may suggest revisions to the updated construction schedule within 5 business days of the date of receiving the updated construction schedule. If the Engineer does not accept or does not provide suggested revisions to the updated construction schedule within 5 business days of receiving the updated construction schedule, or a longer timeframe if mutually agreed upon by the Contractor and the Engineer, the schedule as submitted will be the accepted updated construction schedule.

If revisions are needed prior to acceptance of the updated construction schedule, the Contractor will make the required revisions and submit the revised updated construction schedule to the Engineer within a mutually agreed upon amount of time. The Engineer will accept or may suggest further revisions to the revised updated construction schedule within 2 business days of the date of receiving the revised updated construction schedule.

Acceptance of the updated construction schedule by the Engineer does not modify the contract or constitute endorsement or validation by the Engineer of the Contractor's logic, activity durations, or assumptions in creating the schedule. Acceptance of the updated construction schedule also does not

relieve the Contractor of the obligation to complete all work within the contract time completion requirements.

H. Contract Time: The Department will count contract time in accordance with Section 8.6 and any applicable special provision for contract time.

For the purpose of contract time related to weather delays and determining the actual adverse weather days, the Department will consider the following:

Continuing construction progress on the controlling item is defined as the Contractor's progress to complete remaining work identified as the controlling item or critical path in the current construction schedule. Remaining work is the work remaining to be completed prior to the adverse weather event. For this determination, rework caused by the adverse weather event will not be considered part of the remaining work.

Lost days are defined as the actual days lost during adverse weather and adverse weather recovery days, if applicable. An adverse weather recovery day will only be considered when continuing construction progress on the controlling item is delayed due to the effects of adverse weather.

An adverse weather recovery day must meet the following criteria:

1. Days following adverse weather days needed for project conditions to improve to a condition in which the Contractor is able to or would be expected to restart work.
2. Days following adverse weather days needed for rework of previously completed work conforming to the specifications. The Department will only consider rework necessary through no fault of the Contractor.
3. Days following adverse weather days in which the project conditions result in a delay to the Contractor in continuing construction progress on the controlling item as scheduled prior to the adverse weather.

The Contractor will submit a request by the end of the following week and the Engineer will determine if a day meeting the above criteria will be considered an adverse weather recovery day. The determination will be based on the amount of time the Contractor would be expected to do or does work on continuing construction progress on the controlling item.

In accordance with Section 8.6, no adverse weather recovery day will be considered for any day on which conditions are such that the Contractor would be expected to do or does 6 hours or more of work continuing construction progress on the controlling item. A 1/2 adverse weather recovery day will be considered for any day on which conditions are such

that the Contractor would be expected to do or does at least 2 hours but less than 6 hours of work continuing construction progress on the controlling item. A full adverse weather recovery day will be considered for any day on which conditions are such that the Contractor would be expected to do or does less than 2 hours of work continuing construction progress on the controlling item.

The Engineer will determine which days are actual lost working days during each bi-weekly statement and the Contractor will account for those lost working days by moving the agreed upon lost adverse weather days forward in the construction schedule to the date the working days were lost.

I. Extension of Contract Time:

When considering a time extension request for contract time completion requirements, the Engineer will base the time extension determination on the impact to the initial/baseline construction schedule and all construction schedule updates resulting from the basis (as defined in Section 8.7) for the time extension.

Time extension requests for Category II and III projects must include a construction schedule demonstrating the project schedule impacts to the critical item, the critical path, and completion of the entire project due to items beyond the Contractor's control.

When considering a time extension for contract time completion requirements due to adverse weather, the Engineer will compare the total number of expected adverse weather days against the total number of actual lost days (adverse weather days and adverse weather recovery days) in the current accepted construction schedule.

J. Construction Schedule Payment and Assessments:

1. Construction Schedule Payment: Payment will be full compensation for the work prescribed in this section. The Engineer will make progress payments for the construction schedule in accordance with the following:

- a. 25% of the lump sum contract unit price, not to exceed 1% of the original contract amount will be paid after the construction schedule is accepted.
- b. Payment of the remaining portion of the lump sum contract unit price will be prorated based on the total work completed.

2. Assessments:

- a. **Construction Schedule:** If the Contractor begins work prior to submitting the construction schedule as required in 8.3 B., the Engineer will make an assessment of \$100 for Category I projects, \$250 for Category II projects, and \$500 for Category III projects for each working day until the construction schedule is submitted.

If the Contractor chooses to use the startup schedule option, the assessment will not apply until 30 working days from start of work

- b. **Construction Schedule Updates:** If the Contractor does not submit the updated construction schedule by the agreed upon date each month or as required in 8.3 G., the Engineer will make an assessment of \$100 for Category I projects, \$250 for Category II projects, and \$500 for Category III projects for each working day until the updated construction schedule is submitted.

K. Expected Adverse Weather Days:

The Department has provided Attachment 1. This table depicts the typical number of adverse weather days expected for any given month, based on historical records. The Contractor will consider expected adverse weather days cumulative in nature over the time period when the Contractor is planning to actively pursue completion of the work. The Contractor will not include adverse weather days during extended periods of time when the Contractor is not planning to pursue completion of the work. The Contractor will use the expected adverse weather days shown in the table when establishing and updating the construction schedule.

* * * * *

ATTACHMENT 1

Figure A. Expected Adverse Weather Days for South Dakota

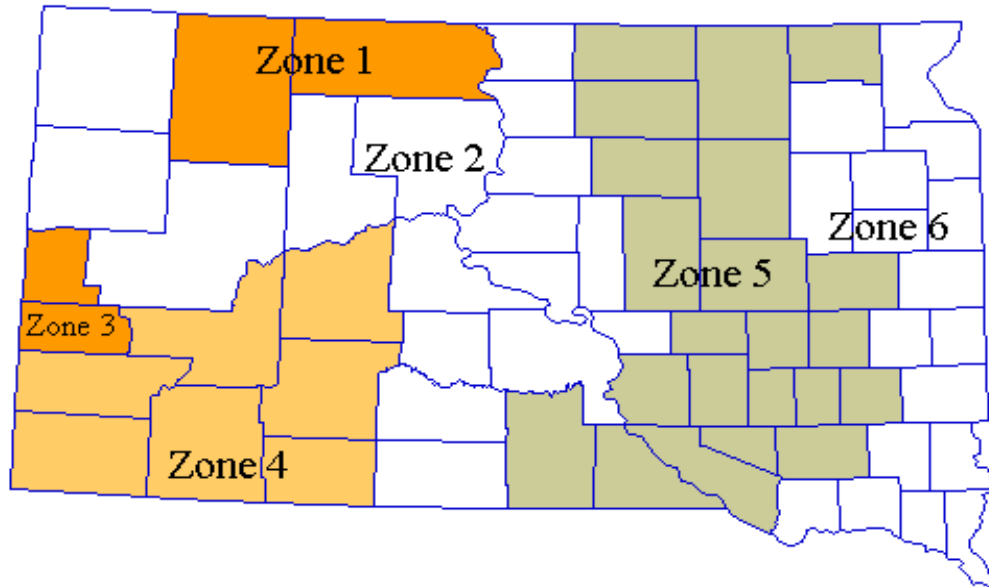


Table 1. Expected Adverse Weather Days for South Dakota

	Grading Projects						Surfacing and Structural Projects					
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
Jan	18	18	16	16	22	24	18	18	15	16	21	23
Feb	19	18	12	14	19	21	19	18	12	14	19	21
Mar	12	10	9	8	11	13	12	10	9	8	10	12
Apr	6	5	8	5	6	6	5	4	6	4	4	4
May	6	6	8	6	6	6	5	5	6	4	4	5
Jun	7	6	7	6	7	8	5	5	5	4	5	6
Jul	5	5	6	5	6	7	4	4	5	3	4	5
Aug	4	4	5	4	5	6	3	3	4	3	4	4
Sep	3	3	4	3	4	5	2	2	3	2	3	4
Oct	4	3	5	3	4	4	3	3	4	2	3	3
Nov	11	9	8	7	10	12	11	9	8	7	10	11
Dec	21	19	15	14	20	22	21	19	15	14	20	22

NOTE: Includes Holidays and Weekends.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
COOPERATION BY CONTRACTOR AND DEPARTMENT**

AUGUST 17, 2017

Delete Section 5.5 of the specifications and replace with the following:

5.5 COOPERATION BY CONTRACTOR AND DEPARTMENT - The Department will supply the Contractor with the number of sets of plans and related contract documents noted in the proposal, 1 of which the Contractor will have available on the project.

A. General: The Contractor will give the work the constant attention necessary to facilitate the progress, supervise, and direct all the work of the Contractor and all subcontractors to completely and efficiently perform work in accordance with the contract documents.

All subcontractors will communicate directly with the Contractor regarding questions about site readiness for construction, current activities of the Contractor and other subcontractors, and any other scheduling types of questions. The Contractor and all subcontractors will cooperate with the Engineer, inspectors, and other contractors.

B. Management and Supervision: The Contractor will provide the management and supervision required by this specification, and in accordance with this specification, regardless of the amount of work subcontracted.

Prior to the preconstruction meeting, the Contractor will provide the Project Engineer written designation of the Project Manager and the Project Superintendent. If the Contractor desires to make changes in designated individuals for Project Manager and Project Superintendent following the preconstruction meeting, the change must be submitted in writing or by email to the Project Engineer in advance of the change. For each crew (Contractor and subcontractor) working on the project, the crew will have a crew working superintendent/foreman.

The project category is specified in the Notice to Contractors.

The following titles, definitions, and responsibilities for Contractor and subcontractor management and supervision will be used by the Department.

1. Titles and Definitions:

- a. Project Manager:** A Contractor employee that is the designated decision making authority for the Contractor and all subcontractors. For category I and II projects, the Project Manager and the Project Superintendent may be the same individual.
- b. Project Superintendent:** A Contractor employee that is in responsible charge of the contract work and directs the daily project operations. For category I and II projects, the Contractor may designate a willing and capable subcontractor employee as the Project Superintendent.
- c. Contractor or Subcontractor Working Superintendent/Foreman:** An employee of the Contractor or subcontractor that directs a group of employees working for the Contractor or subcontractor to complete a specific type of work the Contractor or subcontractor has contracted to complete.

2. Responsibilities:

- a. Project Manager:** The Project Manager will:
 - 1) Be accessible to the Project Engineer as required in Section 5.5 C.
 - 2) Be capable of reading and understanding the plans and specifications and is experienced in and capable of accomplishing the type of work being performed.
 - 3) Schedule and lead the preconstruction meeting.
 - 4) Proactively manage the submittal and approval process.
 - 5) Manage the project scheduling and schedule updating process including leading the schedule update meetings which may be led in person or remotely including, but not limited to, discussion and identification of upcoming controlling item or items of work. This responsibility may be assigned to a willing and capable subcontractor employee for category I and II projects. Assignment of the duties to a subcontractor does not relieve the Contractor of the overall management responsibilities on the project.
 - 6) Coordinate and manage all subcontractors including, but not limited to, subcontractor approval, general performance, schedule integration, and accessibility. Contractors and subcontractors are expected to be on site and completing work according to the project

schedule throughout the life of the project such that the periods of non-construction activity are kept to a minimum.

- 7) Be the designated person with final decision making authority for the Contractor and subcontractors.
- 8) Be the designated Contractor employee to negotiate with the Project Engineer for any contract component with monetary or contract time implications including, but not limited to; change orders, time extensions, and price adjustments. The duties of contract components with monetary or contract time implications must remain with an employee of the Contractor for all category projects.
- 9) If the Engineer determines, in his or her sole discretion, the designee is not fulfilling their assigned role for one or more of the responsibilities, the Engineer will provide written or email notice identifying the insufficient duties and the Contractor will immediately reassign those duties to a designated, willing, and capable individual, as needed, to fulfill the identified duties.

b. Project Superintendent: The Project Superintendent will:

- 1) Be accessible to the Project Engineer as required in Section 5.5 C.
- 2) Be capable of reading and understanding the plans and specifications and is experienced in and capable of accomplishing the type of work being performed.
- 3) Direct the daily project operations in accordance with the construction schedule.
- 4) As appropriate for the project category and at a frequency that is mutually agreed upon with the Engineer, lead construction progress meetings including look-ahead scheduling and planned activities of subcontractors.
- 5) For category III projects, prepare construction progress meeting agendas and designate a Contractor or subcontractor employee to take general notes of the meeting including, but not limited to, future action items, party responsible for future actions items, condensed summary of major issues discussed. The designated individual will distribute the notes to all key project supervision including the Department and affected utilities within a reasonable timeframe mutually agreed upon by the Project Superintendent and Project Engineer. If no timeframe is agreed upon, the designated

individual will distribute the notes no later than the end of the next business day. This practice is also recommended when construction progress meetings are held for category I & II projects.

- 6) When construction progress meetings are not held, update the Project Engineer on changes to subcontractor activities.
- 7) Oversee and direct the daily work activities of all subcontractors on the project. Contractors and subcontractors are expected to be on site and completing work according to the project schedule throughout the life of the project such that the periods of non-construction activity are kept to a minimum.
- 8) Be the designated representative for the Contractor and subcontractors with decision making authority for the Contractor and subcontractors to seek clarification and interpretation of contract document requirements from the Project Engineer.
- 9) Work through the Project Manager to negotiate with the Project Engineer for any contract component with monetary or contract time implications including, but not limited to; change orders, time extensions, and price adjustments.
- 10) If the Engineer determines, in his or her sole discretion, the designee is not fulfilling their assigned role for one or more of the responsibilities, the Engineer will provide written or email notice identifying the insufficient duties and the Contractor will immediately reassign those duties to a designated, willing, and capable individual, as needed, to fulfill the identified duties.

c. Contractor or Subcontractor Working Superintendent/Foreman: A designated employee of the Contractor or subcontractor who will:

- 1) Direct a group of employees working for their respective company to complete a specific type of work their respective company has contracted to complete.
- 2) Be onsite during the progress of the type of work assigned.
- 3) Be capable of reading and understanding the plans and specifications and is experienced in and capable of accomplishing the type of work being performed.
- 4) Work with the Project Manager or the Project Superintendent or both to update the progress schedule for assigned work.

- 5) As appropriate for the project category type, participate in portions of construction progress meetings involving their respective company's specific work being performed.
- 6) Update the Project Superintendent on changes to activities when progress meetings are not held as planned.
- 7) Be the designated representative for the assigned construction staff to seek clarification and interpretation of contract document requirements from the Project Engineer.
- 8) Work through the Project Superintendent or the Project Manager or both for any contract component with monetary or contract time implications including, but not limited to; change orders, time extensions, and price adjustments.

C. Contractor Accessibility Guidelines by Project Category: The following are guidelines for the Project Manager and Project Superintendent to be accessible to the Project Engineer. The Contractor and Project Engineer will agree upon the specific requirements to be used during the preconstruction meeting. The Contractor and Project Engineer may agree to either a shorter or longer accessibility requirement. If no alternate set of requirements are agreed upon, the guidelines listed in this specification will be the requirements. During construction of the project, the Contractor and Project Engineer may mutually agree to revise the agreement, if necessary, in writing or by email for specific needs during the project.

1. Category I and II:

a. Project Manager:

- 1) Will be available by phone or other mutually available technology with a response time within 2 business days.

b. Project Superintendent:

- 1) May be off site with prior notice to the Project Engineer.
- 2) When off site, the Project Superintendent will be available by phone with a response time within 1 business day, or on site as scheduled.

2. Category III:

a. Project Manager:

- 1) Will be available by phone or other mutually available technology with a response time within 1 business day.

b. Project Superintendent:

- 1) May be off site with prior notice to the Project Engineer.
- 2) When off site, the Project Superintendent will be available by phone with a response time of the same business day, or on site as scheduled.

D. Department Accessibility Guidelines: The following are guidelines for the Project Engineer and Engineering Supervisor to be accessible to the Contractor and are to be agreed upon during the preconstruction meeting. If weekend work is anticipated, the Contractor will provide notice to the Project Engineer by Thursday of the same week. The Contractor and Project Engineer will agree upon the specific requirements to be used during the preconstruction meeting. The Contractor and Project Engineer may agree to either a shorter or longer accessibility requirement. If no alternate set of requirements are agreed upon, the guidelines listed in this specifications will be the requirements. During construction of the project, the Contractor and Project Engineer may mutually agree to revise the agreement, if necessary, in writing or by email for specific needs during the project. The Department will submit changes in designated Department individuals, either temporarily or permanently, for Field Technician, Project Engineer, or Engineering Supervisor in writing or by email to the Contractor's designated Project Manager and Project Superintendent in advance of the change.

1. Category I, II, and III:

a. Field Technician:

- 1) Will to be on site during the construction of their assigned work activities and will be available to the Project Superintendent and associated Working Superintendent/Foreman while these work activities are performed.
- 2) May be off site during work activities that do not require testing or inspecting.
- 3) Will participate in progress meetings when invited by the Project Engineer.

b. Project Engineer:

- 1) Will be available by phone with a response time of the same business day or on site within 1 business day for Category I & II projects and within 1/2 business day for Category III projects.
- 2) When off site for more than 1 business day, the Project Engineer will notify the Project Superintendent and any Working Superintendent/Foremen and will remain available by phone with a response time of the same business day or on site within 1 business day.

c. Engineering Supervisor:

- 1) Will be available to Project Manager and Project Superintendent through the Project Engineer by phone or other mutually available technology with a response time of 1 business day or on site within 2 business days.

E. Project Management Payment: Project management will be paid for at the contract lump sum price. Payment will be full compensation for all costs associated with providing project management and performing all related duties.

Payment for project management will be made as follows:

1. 20% of contract item lump sum price upon designation of Project Manager and Project Superintendent.
2. 50% of contract item lump sum price when construction project is 25% completed.
3. 75% of contract item lump sum price when construction project is 50% completed.
4. 90% of contract item lump sum price when construction project is 75% completed.
5. 100% of contract item price when construction project is 100% completed and the Area Office has issued the Acceptance of Field Work in accordance with Section 5.16.

* * * * *

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
ON-THE-JOB TRAINING PROGRAM**

MARCH 10, 2016

This Training Special Provision supersedes Part II, Nondiscrimination, Section 6, Training and Promotion, paragraph “b” on Page 2 of the Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273 – Rev. 5/1/2012).

PURPOSE

The purpose of the On-the-Job (OJT) Program is to provide training in the highway construction industry for minority, female, and economically disadvantaged individuals, hereafter known as the target group. Pursuant to 23 Code of Federal Regulations Part 230, Subpart A, Appendix B – Training Special Provisions, this program provides for on-the-job training aimed at developing full journeyworkers in the type of trade or job classification involved.

INTRODUCTION

A signature from a bidder on the proposal sheet indicates that the bidder agrees to take part in the OJT Program and to follow the OJT Program Special Provision. Contractors that fail to follow the special provision will be subject to sanctions up to and including revocation of bidding privileges.

In order for the OJT Program to be successful, contractors must follow basic and uniform procedures in training such as, keeping monthly records of trainee progress towards journeyworker status and reporting trainee’s successful completion/termination from the OJT Program.

SELECTION OF TRAINING PROGRAM

- A. The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the South Dakota Department of Transportation (Department or SDDOT) and the Federal Highway Administration (FHWA).
- B. The Department and FHWA have currently approved one OJT program for use in South Dakota and that is the OJT program designed and implemented by the

department. Any trainee who has begun training in the previously approved OJT program will be allowed to transfer to the current approved OJT program.

- C. There may be other training programs which some Contractors might wish to utilize. If the Contractor intends to use such a program to meet the OJT requirements on a federal-aid contract with training requirements, approval or acceptance of such program shall be obtained from the Department and FHWA **prior** to beginning training on any classification covered by that program.

It is the intention of these provisions that training is to be provided in the construction crafts rather than administrative support type positions or lower level management positions. Training for any job classification not listed in the current OJT program manual may be permitted provided that significant and meaningful training is provided and prior approval is obtained by the Department Civil Rights Office and the FHWA Division office.

RECRUITMENT AND SELECTION PROCEDURES

A. Prerequisite for Trainees

1. To be qualified for enrollment in the OJT Program, a trainee applicant should be a member of one of the targeted groups (unless an alternate selection is authorized by the Department), must possess basic physical ability for the work to be performed, should have demonstrated qualities of dependability, willingness to learn, ability to understand and follow instructions and an aptitude to maintain a safe work environment.
2. No person shall be employed as a trainee in any classification in which that person has successfully completed a training course leading to journeyworker status or in which the individual has been employed as a journeyworker. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

B. Licenses

Truck driver trainees must possess appropriate driver permits or licenses for the operation of Class A, B, and C trucks. When an instructional permit is used in lieu of a license, the trainee must be accompanied by an operator who:

1. Holds a license corresponding to the vehicle being operated;
2. Has had at least one year of driving experience; and
3. Is occupying the seat next to the driver trainee.

C. Recruitment

1. Notices and posters setting forth the Contractor's Equal Employment Opportunity Policy and the availability of training programs will be placed in areas readily accessible to employees, applicants for employment and potential employees.
2. Training and upgrading of minorities, women, and socially and economically disadvantaged persons toward journeyworker status is the primary objective of this Special Provision. Accordingly, the Contractor shall make every effort to enroll minority trainees, women and disadvantaged persons by conducting systematic and direct recruitment through public and private sources likely to yield minority and female applicants to the extent that such persons are available within a reasonable area of recruitment.
3. Full consideration will be given to upgrading current minority and female employees.

D. Selection

1. The selection and employment of an eligible person by a participating Contractor, in accord with the above Parts A, B, and C, shall qualify the person of the OJT Program.
2. Employment of trainees will be in accordance with the work force requirements of the Contractor. Each Contractor will hire and train the trainees for use in his own organization.
3. Contractors must follow the registration procedures as set out for the South Dakota Department of Transportation. An original registration form must be sent to the Department Civil Rights Office for review and approval. In the event that the Department OJT Registration Form(s) are not received by the Civil Rights Office within two weeks of the date the contractor begins significant work on the project, progress payments may be suspended. This suspension will be lifted upon receipt and approval of the form(s).
4. To be acceptable as an economically disadvantaged trainee, the applicant must meet current disadvantaged guidelines (relative to employment and income) as set out by the United States Department of Labor. These guidelines are available from South Dakota Department of Labor offices and contractors must maintain the necessary documentation on file for review by the department.
5. The Department expects that Contractors will employ minority, female, and disadvantaged persons for all trainee positions assigned through this OJT Special Provision unless such persons are not available within a

reasonable area of recruitment. The Civil Rights office may withhold approval of any trainee who is not a member of one of the targeted groups unless the Contractor can demonstrate a good faith effort to recruit and select a minority, female, or economically disadvantaged person and was unsuccessful in recruiting from the target group.

DEPARTMENT RESPONSIBILITIES

The Department (Civil Rights office):

- A. Will monitor Contractor payrolls and OJT reports for payment of correct wage rates and for evidence of providing a continuing instructional process. The Civil Rights office will maintain records of Contractor participation in the program; names, and training classifications of trainees and other information necessary to assess program participation and results.
- B. Will assist contractors with trainee recruitment, will encourage minority/female recruitment sources to refer suitable applicants, and will monitor Contractor instructional efforts and record keeping.
- C. Reserves the right to do EEO (Equal Employment Opportunity) or OJT reviews on the contractor, at any time without prior notice, to ensure that trainees are getting the proper instruction from their trainer/supervisor.

CONTRACTOR RESPONSIBILITIES

The Contractor:

- A. Will furnish the trainee a copy of the training program to be followed in providing the training and will provide each trainee graduate with a certificate showing the type of training satisfactorily completed.
- B. Will identify all trainees on the registration forms, training reports and project payroll by proper classification title, (see SDDOT Training program booklet) e.g. *heavy duty mechanic, form builder*, etc. **Do not use** coding letters/numbers from the wage scale. On payrolls, contractors must include the designation "trainee" following the job classification title.
- C. Will provide a monthly training report to the Department Civil Rights office within thirty (30) days of the last full pay period of the month on the form supplied by the Department and will use this same form to promptly notify the Department (within thirty days) whenever a trainee leaves the OJT program (voluntarily or involuntarily) or when a trainee completes the program.

- D. Will pay not less than the minimum wage rates as set forth in the specific requirements of the applicable training program and as noted on the copy of the registration form returned to the contractor.
- E. Assign the trainee to a skilled craftsman, foreman, supervisor or mentor who will be responsible for the day-to-day training and mentoring of the trainee and who will share the appropriate skills associated with the classification for which the trainee is enrolled. The contractor attests to providing verification, if requested, that the trainee is being trained and is gaining knowledge to achieve full journeyman status by a supervisor/trainer.
- F. Shall only count, for credit; hours spent training within the classification for which the trainee is enrolled. If such classification is not necessary for a period of time or a particular project, the contractor should attempt to continue to employ the trainee by assigning him/her other duties. A percentage of hours worked on other pieces of equipment are required to be counted in the total hours worked. Approximately 25% of other duties can be counted towards graduation.
- G. Shall count all hours worked in a training program regardless of whether the work was in South Dakota or outside the state. For trainees in required training slots, the contractor will only be reimbursed for eligible hours for work performed in South Dakota.
- H. Will provide a program orientation to the training foreman, superintendent, and OJT trainee. This orientation shall include at a minimum, a review of individual responsibilities during the training program and copies of the training syllabus for the job classification.
- I. Will instruct the trainee in safe and healthful work practices and shall ensure that the trainee is trained in facilities and other environments that are in compliance with all applicable safety and health laws and regulations of the United States and the State of South Dakota.
- J. Provide the trainee a copy of the training program to be used. The contractor must also designate the employee as a "trainee" on weekly certified payrolls. The contractor is responsible for ensuring that proper training is taking place on the job by meeting with the supervisor/foreman of the project that the trainee is working.
- K. In the event that a contractor may be unable to fill the required trainee slot during the current construction season, the Civil Rights Compliance Officer must be notified and contacted by December 1 of the current construction season. Proper documentation must be provided as to why the trainee position was not filled, such as project carry-over until next year.
- L. Certify the trainee hours and be able to show that the trainee is receiving the proper training for their classification. Failure to do so may result in project sanction.

- M. Is expected to begin training trainees on a project as soon as feasible after the start of work utilizing the job classification involved. After training has started the contractor should strive to provide monitoring efforts to retain and successfully train employees.

ADDITIONAL APPLICABLE PROVISIONS

- A. The minimum number of hours of training to be provided on this project is as specified in the bid documents. The Contractor shall select whatever training classification specified in the current training program that best meet his employment needs and training hours and minimum wage shall be in accord with that classification.
- B. For the purposes of bidding required trainee slots each trainee is assigned a bid quantity of 500 hours. For example if there is 1000 hours in the bidding documents, that is requiring 2 trainees. The contractor has the option to register multiple trainees to fulfill the training requirement. For example if there is a 1000 hour bid quantity, which equals 2 required trainees, the contractor could have three or more trainees registered in the program as long as there enough work for additional trainees to successfully complete the curriculum and not exceed the allowable ratio of trainees to journeymen (generally considered to fall between 1:10 or 1:4)
- C. Please note that 500 hours for each training slot is for bidding purposes only. If a contractor does not achieve the bid quantity on a project, there is no penalty as long as a good faith effort was made to fulfill the training requirement. Also the contractor is not limited to just the bid quantity for reimbursement. If the total hours achieved on a project is higher than the bid quantity, the contractor will be reimbursed for all hours worked. For example if the bid quantity is 1000 hours and the total hours of the trainees are 1450 hours, the contractor will receive reimbursement for 1450 hours.
- D. Registration and reporting requirements shall be as set forth in the program documents; printed instructions and this provision.
- E. Contractors using the current training program may meet the training obligations by either 1) enrolling a new trainee in one of the classifications, or 2) using a trainee currently enrolled in one of the current training program classifications, provided that person has sufficient training hours remaining to meet the minimum project requirements as specified in bid documents. In either case, prospective trainees must meet the program requirements as set forth in "Recruitment and Selection Procedures" above.
- F. The department is responsible for long term maintenance of records regarding trainee registration in various training classifications and for total trainee hours as provided by one or more contractors.

WAGE RATES

- A. Minimum wage rates shall be in accord with program requirements for each classification and trainee placement within the training hours requirement. In no case shall the minimum wage be less than the common laborer classification of the applicable wage rate information contained in the bid documents. Where applicable, trainees shall be paid full fringe benefit amounts.
- B. At the completion of the OJT program, the trainee shall receive the wages of a skilled journeyworker for that specific classification.
- C. For the purpose of the OJT program, a quarter of the program is twenty-five percent (25%) of the training hours credited to the trainee for a particular classification and does not represent three months of the year. Other wage benchmarks are calculated in a similar manner.

BASIS OF PAYMENT

- A. All program reimbursements will be made directly to the Contractor at the project conclusion. The Contractor will be paid, as reimbursement for the extra cost involved in providing the training, the amount per training hour bid for the item "Training" for each hour of training provided and reported.
- B. All hours of onsite and approved offsite training provided in accordance with the approved program and this provision and as shown in trainee reports and on project payrolls will be credited as trainee hours for purpose of contract payment.
- C. No payment will be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyworker, is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Special Provision.
- D. Liquidated damages will be assessed the contractor for failure to make a good faith effort to enroll the number of trainees necessary to meet the training requirements of this Special Provision. For each trainee slot left unfilled, damages will be assessed at the rate of 100% of the bid amount for the training item times the minimum number of hours specified in the item quantity. For each trainee for whom contractor training is determined to be inadequate and which evidences a lack of good faith to fulfill the training requirements, damages will be assessed at the rate of 100% of the bid amount for the training item times the minimum number of hours specified in the item quantity.
- E. Failure to furnish required documents and reports in the manner and time specified may result in forfeiture of all or a portion of the amounts due the Contractor for reimbursement for training.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
INDIAN EMPLOYMENT AND CONTRACTING ON THE
STANDING ROCK RESERVATION**

**PROJECT NO. NH-PS 0012(187)106; PCN 04FL
CORSON COUNTY
NOVEMBER 4, 2021**

PURPOSE

The purpose of the Indian Employment and Contracting Special Provision is to establish the specifications for Indian preference and the responsibilities of contractor and subcontractors for this project.

All of this project is located within the exterior boundaries of the Standing Rock Reservation.

Title 23 United States Code (USC), Section 140(d), recognizes and permits the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservations roads. The State of South Dakota and the Department of Transportation, consistent with the intent of Section 140(d), affirms that it is their policy to encourage employment of minorities.

DEFINITIONS

For the purposes of this Special Provision, the following definitions will apply:

- A. **Indian:** An enrolled member of a federally recognized Indian tribe.
- B. **Qualified Indian Applicant** is defined as one or more of the following:
 - 1) Applicants approved by the contractor based on job performance on other jobs.
 - 2) Applicants who have demonstrated or are presently demonstrating their work qualifications during a probationary work period on this project.
 - 3) Applicants certified by local referral agencies, including Tribal TERO offices, as having adequate skills and training necessary to perform the duties of the position.
- C. **Core Crew Employee:** A contractor's or subcontractor's core crew is composed of full time employed individuals necessary to satisfy his/her reasonable needs for supervisory or specially experienced personnel to assure an efficient execution of the contract work. Any Indian already employed by a contractor will be included in the core crew, regardless of job function, to avoid the unintended results of having a contractor lay-off or terminate an Indian employee to hire another under this provision.

- D. **Pre-Employment Standards:** Directly related job standards of fitness and ability which indicate that with a reasonable amount of job training a person would be capable of satisfactorily performing an entry level position as well as jobs at a higher level which, with a reasonable amount of training, are normally filled by progression from an entry-level position. This applies to those persons who, at the time of application for employment, are not fully qualified for the available job but have general potential of becoming qualified through a reasonable amount of training.

DEPARTMENT RESPONSIBILITIES

The Department (Civil Rights Office or Area Office):

- A. Will monitor contractor and subcontractors for compliance with the requirements of this special provision and will perform necessary reviews of contractors and subcontractors to ensure compliance with the Special Provision.
- B. Will assist the contractor and subcontractor with any disputes with the TERO Office or other Tribal entity.
- C. Will establish on-the-job Training opportunities as specified in the On-the-Job Training Special Provision.
- D. Will provide notification to the TERO Office of the name of the successful low bidder.
- E. Will provide notification to the successful low bidder regarding the TERO requirements.
- F. Will invite a representative of the TERO Office to attend the preconstruction meeting and provide a copy of the preconstruction meeting minutes to the TERO Office.
- G. Will not allow a contractor or subcontractor to commence work until the contractor's or subcontractor's compliance plan has been approved and the Department's Area Office has received a copy of the approved compliance plan or verbal or written notification of approval by the TERO Office

CONTRACTOR RESPONSIBILITIES

- A. The contractor and subcontractor will give preference in employment opportunities under this Agreement to qualified Indian applicants who can perform the work required regardless of race, color, creed, age, sex, religion, national origin, disability, or tribal affiliation to the extent set out in the paragraphs below.
- B. The contractor and subcontractor will not use pre-employment standards, qualifications, criteria, or other personnel requirements as barriers to Indian employment except when such criteria or standards are required by business necessity. The contractor and subcontractor have the burden of showing that such criteria or standards are required by business necessity.

- C. The contractor agrees that Indians will be given preference for at least seventy percent (70%) of the skilled labor force and one hundred percent (100%) of the general laborers of project work force, as described in the Davis-Bacon Act Wage Decisions, Heavy-Highway scale, provided that sufficient qualified Indian applicants are available. The phrase "work force" will not include "core crew employees".
- D. The contractor and subcontractor are required to complete a compliance plan and submit the compliance plan to the TERO Office at least two (2) weeks prior to beginning work. Prior to commencing work, contractors and subcontractors must contact the Standing Rock Sioux Tribe TERO Office concerning an identified core crew, project work force needs, and (sub)contractor/TERO interface. No contractor or subcontractor will begin work until the compliance plan has been approved by the TERO Office. The contractor and any subcontractor must submit a copy of the approved compliance plan to the Department's Area Office prior to commencing work unless arrangements are made for the TERO office to provide the copy of the compliance plan directly to the Department's Area Office. In lieu of a copy of the approved compliance plan, the Department's Area Office may seek approval directly from the TERO Office.
- E. The contractor will provide the TERO Director at least forty-eight hours' notice to locate and refer a qualified Indian applicant for any vacancy or new position except when circumstances require the position be filled within a shorter period of time. If the TERO Office is unable to fill the vacancy, the contractor and subcontractor may recruit and hire workers from whatever sources are available and by whatever process, provided that the contractor and subcontractor notifies the TERO Office of any job vacancies, positions, or any negotiated positions.
- F. The contractor and subcontractor will provide for maintenance of records and be prepared to furnish such periodic reports documenting compliance under this Special Provision as the Department determines necessary. The contractor and subcontractor will submit the following information on a weekly basis to the Tribal TERO Office:
1. Weekly TERO Employment Report which includes the following data (forms for the weekly TERO Employment Report available from the TERO Office):
 - a) Wage and hour reports
 - b) New hires or terminations, and disciplinary action taken
 - c) Promotions
 2. One copy of the official payroll (as submitted to the Department of Transportation).
 - a) Core crew employees will be identified with a letter "C" beside the employee name.
 - b) Employees referred through the Standing Rock TERO Office or other Indian employees hired locally will be identified with a letter "T" beside the employee name.
- G. The contractor and subcontractor agree that all qualified Indian employees will be adequately trained for the position for which they are hired. The contractor and subcontractor will evaluate and pay all Indian employees in accordance with current company policies and contract provisions.

- H. Nothing in this Special Provision will be construed to interfere with the contractor's ability to dismiss any employee for cause including, but not limited to, lack of adequate skills or training, inability to perform by virtue of state or federal law, or breach of the contractor's standards of conduct.

OTHER PROVISIONS

This Special Provision supplements but does not replace the existing equal employment opportunity and disadvantaged business enterprise requirements, which may be included in this Agreement.

The Tribal TERO Office will maintain a Job Skills Bank, listing available Indians by job classification based on skill level as indicated on their TERO application. The contractor and subcontractors agree to utilize the Tribal TERO Office to locate qualified applicants.

The contractor is authorized to include in the bid an amount necessary to cover the two percent (2%) employment rights fee, which is applicable to this project, based on the portion of the project located within the boundaries of the Standing Rock Reservation. The Department has determined that one hundred percent (100%) of the project is within those boundaries; therefore the contractor is authorized to include a TERO fee amount based on 100% of the total contract dollar amount.

The contractor is also authorized to include in the bid an amount necessary to cover the Tribe's approved FHWA Training Program Fee. This Training Fee is one-half of one percent (0.5%) and based on the portion of the project which is located within the boundaries of the Standing Rock Reservation. The Department has determined that one hundred percent (100%) of the project is within those boundaries; therefore the contractor is authorized to include a Tribal Training Fee amount based on 100% of the total contract dollar amount. Contact the Tribal TERO Office for complete details at 701-854-7295.

For informational purposes, the Standing Rock Sioux Tribe has assessed a fee for water taken from trust lands, tribal-owned lands, or deeded lands owned by members of the Standing Rock Sioux Tribe. If fees are assessed on this project, the Contractor will pay the fee directly to the Standing Rock Sioux Tribe. The TRIBE will not assess any fees for water taken from deeded land owned by non-members of the Standing Rock Sioux Tribe. The contractor will negotiate any fees for water taken from deeded lands owned by non-members of the Tribe directly with the landowner. All fees will be incidental to the applicable unit prices as indicated in the Special Provision for Price Schedule for Miscellaneous Items. For more information regarding fees assessed by the Tribe, contact the Water Resources Department, Standing Rock Sioux Tribe at 701-854-7214.

The Standing Rock Sioux Tribe Environmental Quality Commission has directed that a permit fee of 1% based on the contract amount be imposed on all prime contractors for waste removal and disposal on the Standing Rock Reservation. This permit fee is only applicable for the amount of the project within the reservation boundaries and not for the full contract amount. The contractor is authorized to include in the bid an amount necessary to cover the one percent (1%) environmental quality permit fee which is applicable to this project, based on the portion of the project which is located within the boundaries of the Standing Rock Reservation. The Department has determined that one hundred percent (100%) of the project is within those boundaries; therefore the contractor is authorized to include a permit fee amount based on

100% of the total contract dollar amount. Contact the Tribal Environmental Quality Support Services offices at 701-854-3823.

The Standing Rock Sioux Tribe has an Indian Preference Subcontracting goal, which has been established at the same level as the Department's DBE goal for this project and is concurrent with the Department's DBE goal. The Tribe recognizes that FHWA policy does not permit the Department to extend Indian preference in subcontracting for this project and is satisfied the Department and the contractor will seek qualified and DBE-certified Indian firms for this project. The contractor will make every reasonable effort to inform certified Indian DBE firms of the subcontracting opportunities of the project and to solicit bids from such firms. Contact the Tribal TERO Office at 701-854-7295 or the Department's Civil Rights Office at 605-773-3540 for assistance.

ENFORCEMENT

The contractor and all subcontractors are made aware that this Special Provision is made part of the contract requirements, and that the Department of Transportation will monitor and enforce these provisions in a manner similar to other special provisions, as outlined in Division I, General Provisions of the Standard Specifications for Roads and Bridges, 2015 edition.

The TERO Special Provision will apply to the entire project and not just the portion located within the boundaries of the Standing Rock Reservation with the exception of the fees that are calculated based on the portion located within the reservation boundaries.

It is the intent of all parties that this Special Provision be implemented on a cooperative basis without regard to jurisdictional issues. It is agreed that nothing in this Special Provision will prevent the Tribe, the Department, or any contractor from instituting any litigation pertaining to any jurisdictional issue with regard to the employment rights code or any other matter.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
REGARDING RESTRICTED WORK AT DRAINAGE CROSSINGS OR
WETLANDS**

**NH-PS 0012(187)106 Corson PCN 04FL
US12 - Str 7.9 E of the Perkins Co Line, Str 0.2 W of SD65S over BNSF RR
Replace Str Bridge, Approach Grading, BNSF Construction Management**

NOVEMBER 4, 2021

This project includes pending approval of a permit application filed with US Army Corps of Engineers (USACE) SD Regulatory Office. The USACE issues nationwide permits to authorize construction activities within waters of the United States as regulated by Section 404 of the Clean Water Act and USACE Permit Regulations 33 CFR 320-332. The permit application for this project was submitted to the USACE on August 25th, 2021.

Work will be prohibited at the drainage crossings or wetlands shown below until the Department notifies the contractor that a permit has been authorized and that work may proceed in the areas designated below. At the time of notification, the Department will include the general conditions and, if necessary, special conditions that must be complied with to in order for the authorization to be valid.

Drainage Crossings Permanent:

Sta. 30+00 to 39+00R

Tributary to Hay Creek

It is anticipated that authorization will be received by December 1st, 2021 and will be valid until March 18, 2022. If authorization is not received by the date anticipated and causes a delay or impact to the contractor's schedule, the contractor shall notify the Engineer immediately so contract time can be recorded and charged in accordance with the specifications and provisions set forth in this contract.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
RAILROAD INSURANCE REQUIREMENTS AND
WORKING ON RAILROAD PROPERTY FOR
GRADE SEPARATED CROSSINGS
WITH BNSF RAILWAY COMPANY**

**PROJECT NH-PS 0012(187)106, PCN 04FL
CORSON COUNTY**

MCINTOSH STRUCTURE # 16-328-018, US DOT # 393936H, MP 862.75

August 23, 2021

The Contractor will perform the work in a manner that will not endanger or interfere with the safe and timely operations of Burlington Northern Santa Fe Railway Company (BNSF) and its facilities. The Contractor will perform the work in accordance with the requirements of this special provision and the attached Exhibit C and C1. The Contractor will provide BNSF a certified copy of Exhibit C1 before entering BNSF's right of way.

The Contractor will perform the work in accordance with the bridge requirements set forth in Exhibit F and the detailed plans and specifications approved by BNSF.

The Contractor will submit copies of any plans (including calculations in English Units) for proposed shoring, falsework, or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by Contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions, and other legislative bodies.

Unless approved by BNSF and the Area Engineer, no work will be performed within the BNSF right of way during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The Contractor will not subject trains to a delay during this time period.

* * * * *

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the Highway 12 overpass DOT No. 393936H.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not

limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Contractor's Contact info:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify Area Engineer John Villbrandt, John.Villbrandt@state.sd.us, phone 605-845-3844, and Railway's Manager Public Projects, email Jeremy.Wegner@bnsf.com, at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file **BF10016325**.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five (5) sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two (2) sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway

Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

- 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the SD DOT and must not be undertaken until approved in writing by the Railway, and until the SD DOT has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by SD DOT for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railway tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous

substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at <http://www.eVerifile.com>, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster Thomas Ohotzke (email Thomas.Ohatzke@bnsf.com)** and **Project Engineer Ellen Coulter (Ellen.Coulter@bnsf.com)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by SD DOT. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 5 freight trains per 24-hour period at a timetable speed 40 MPH and 0 passenger trains.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway

representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that

would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (Ellen.Coulter@bnsf.com)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

☐ Passenger on train (C)

☐ Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)

☐ Contractor/safety sensitive (F)

☐ Contractor/non-safety sensitive (G)

☐ Volunteer/safety sensitive (H)

☐ Volunteer/other non-safety sensitive (I)

☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM
DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St:	_____	2. Date:	_____	Time:	_____
County:	_____	3. Temperature:	_____	4. Weather:	_____
(if non BNSF location)					
Mile Post / Line Segment:	_____				
5. Driver's License No (and state) or other ID:	SSN (required): _____				
6. Name (last, first, mi):	_____				
7. Address:	_____	City:	_____	St:	_____
				Zip:	_____
8. Date of Birth:	_____	and/or Age:	_____	Gender:	_____
		(if available)			
Phone Number:	_____	Employer:	_____		
9. Injury:	_____	10. Body Part:	_____		
	(i.e., Laceration, etc.)		(i.e., Hand, etc.)		
11. Description of Accident (To include location, action, result, etc.):					

12. Treatment:					
<input type="checkbox"/>	First Aid Only	_____			
<input type="checkbox"/>	Required Medical Treatment	_____			
<input type="checkbox"/>	Other Medical Treatment	_____			

13. Dr. Name:	_____	Date:	_____		
14. Dr. Address:	_____				
Street:	_____	City:	_____	St:	_____
				Zip:	_____
15. Hospital Name:	_____				
16. Hospital Address:	_____				
Street:	_____	City:	_____	St:	_____
				Zip:	_____
17. Diagnosis:	_____				

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS
AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: BF10016325

Agency Project: McIntosh Highway 12 Overpass

_____ (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20____, with the State of South Dakota for the performance of certain work in connection with the following project: **Highway 12 overpass DOT No. 393936H**. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the **State of South Dakota** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY**

CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) **INSURANCE**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a “claims made” basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor’s insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor’s obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean “Burlington Northern Santa Fe LLC”, “BNSF Railway Company” and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; *provided, however*, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT “C” CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit “C” attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative five (5) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

-Signature Page To Follow-

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

Contractor Legal Name

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Accepted and effective this day _____.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

EXHIBIT “F”

BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The Agency shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6 inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the Agency will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the Agency will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Providers have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Provider entering BNSF's right-of-way or property, the Agency should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The Agency shall reimburse BNSF for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Agency will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

The Agency will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Project.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Agency. Trespasser control shall be the responsibility of the Agency. Graffiti removal will be the responsibility of the Agency.

BRIDGE INSPECTION:

The Agency will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will be not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
RAILROAD INSURANCE REQUIREMENTS AND
WORKING ON RAILROAD PROPERTY FOR
GRADE SEPARATED CROSSINGS
WITH BNSF RAILWAY COMPANY**

**PROJECT NH-PS 0012(187)106, PCN 04FL
CORSON COUNTY**

MORRISTOWN STRUCTURE # 16-083-11, US DOT # 393956U, MP 887.91

August 23, 2021

The Contractor will perform the work in a manner that will not endanger or interfere with the safe and timely operations of Burlington Northern Santa Fe Railway Company (BNSF) and its facilities. The Contractor will perform the work in accordance with the requirements of this special provision and the attached Exhibit C and C1. The Contractor will provide BNSF a certified copy of Exhibit C1 before entering BNSF's right of way.

The Contractor will perform the work in accordance with the bridge requirements set forth in Exhibit F and the detailed plans and specifications approved by BNSF.

The Contractor will submit copies of any plans (including calculations in English Units) for proposed shoring, falsework, or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by Contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions, and other legislative bodies.

Unless approved by BNSF and the Area Engineer, no work will be performed within the BNSF right of way during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The Contractor will not subject trains to a delay during this time period.

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EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the Highway 12 overpass DOT No. 393956U.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify Area Engineer John Villbrandt, email John.Villbrandt@state.sd.us (605-845-3844), and Railway's Manager Public Projects, email Jeremy.Wegner@bnsf.com, at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file **BF10018097**.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five (5) sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two (2) sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until

notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750

- volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 7/8" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the SD DOT and must not be undertaken until approved in writing by the Railway, and until the SD DOT has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by SD DOT for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railway tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess

of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at <http://www.eVerifile.com>, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the

Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster Thomas Ohotzke (email Thomas.Ohatzke@bnsf.com)** and **Project Engineer Ellen Coulter (Ellen.Coulter@bnsf.com)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by SD DOT. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 5 freight trains per 24-hour period at a timetable speed 40 MPH and 0 passenger trains.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where

movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage

unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (Ellen.Coulter@bnsf.com)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees

and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

☐ Passenger on train (C)

☐ Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)

☐ Contractor/safety sensitive (F)

☐ Contractor/non-safety sensitive (G)

☐ Volunteer/safety sensitive (H)

☐ Volunteer/other non-safety sensitive (I)

☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM
DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St:	_____	2. Date:	_____	Time:	_____
County:	_____	3. Temperature:	_____	4. Weather:	_____
(if non BNSF location)					
Mile Post / Line Segment:	_____				
5. Driver's License No (and state) or other ID:	SSN (required): _____				
6. Name (last, first, mi):	_____				
7. Address:	_____	City:	_____	St:	_____
				Zip:	_____
8. Date of Birth:	_____	and/or Age:	_____	Gender:	_____
		(if available)			
Phone Number:	_____	Employer:	_____		
9. Injury:	_____	10. Body Part:	_____		
	(i.e., Laceration, etc.)		(i.e., Hand, etc.)		
11. Description of Accident (To include location, action, result, etc.):					

12. Treatment:					
<input type="checkbox"/> First Aid Only					
<input type="checkbox"/> Required Medical Treatment					
<input type="checkbox"/> Other Medical Treatment					

13. Dr. Name: _____ Date: _____					
14. Dr. Address:					
Street: _____ City: _____ St: _____ Zip: _____					
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15. Hospital Name: _____					
16. Hospital Address:					
Street: _____ City: _____ St: _____ Zip: _____					
17. Diagnosis: _____					

EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: BF10018097

Agency Project: Morristown Highway 12 Overpass

_____ (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20____, with the State of South Dakota for the performance of certain work in connection with the following project: Highway 12 overpass DOT No. 393956U. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the **State of South Dakota** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about

Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of “Physical Damage to Property” shall be endorsed to read: “means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured’ care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway’s Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor’s care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility

for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on

the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT “C” CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit “C” attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative five (5) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

-Signature Page To Follow-

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

Contractor Legal Name

By: _____

Printed Name: _____

Title: _____

BNSF Railway Company

By: _____

Name: _____
Manager Public Projects

Accepted and effective this day _____.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

EXHIBIT “F”

BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The Agency shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6 inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the Agency will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the Agency will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Providers have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment

working near live tracks. Any invitation to bid and specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Provider entering BNSF's right-of-way or property, the Agency should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The Agency shall reimburse BNSF for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Agency will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

The Agency will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Project.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Agency. Trespasser control shall be the responsibility of the Agency. Graffiti removal will be the responsibility of the Agency.

BRIDGE INSPECTION:

The Agency will conduct routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will be not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
PERMANENT MECHANICALLY STABILIZED EARTH
WIRE FACE WALLS**

**PROJECT NH 0012(187)107, PCN 04FL
CORSON COUNTY**

May 28, 2019

I. DESCRIPTION

This work shall consist of permanent mechanically stabilized earth (MSE) wire face retaining walls constructed in accordance with these specifications and in reasonably close conformity with the lines, grades, and dimensions shown on the plans or established by the Engineer.

II. MATERIALS

The Contractor shall make arrangements to purchase all wire facing elements to include backing materials, soil reinforcing elements, attachment devices, and all other necessary components. Materials not conforming to this section of the specifications or from sources not listed in the contract documents shall not be used without written approval from the Area Engineer.

A. Wire Facing, Soil Reinforcing and Attachment Devices: All facing, reinforcing, and attachment devices shall be carefully inspected to ensure they are true to size and free from defects that may impair their strength and durability.

1. Wire Facing, Reinforcing Mesh, and Attachment Devices: Wire facing, reinforcing mesh, and attachment devices shall be shop fabricated of cold-drawn steel wire conforming to the requirements of AASHTO M 32 (ASTM A1064) and shall be welded into the finished mesh fabric in accordance with AASHTO M 55 (ASTM A1064).

2. Reinforcing Strips: Reinforcing strips shall be hot-rolled from bars to the required shape and dimensions. The strips' physical and mechanical properties shall conform to the requirements of ASTM A572, Grade 65 minimum.

3. **Corrosion-resistant coating:** Galvanization shall be applied after the mesh is fabricated. Steel components shall be hot-dip galvanized in accordance with AASHTO M 111 (ASTM A123). A minimum galvanization coating of 2.0 oz/ft² or 3.4 mils thickness is required. Steel components shall be adequately supported while lifting and placing such that the galvanization remains intact. Steel components with damaged (peeled) galvanization shall be repaired according to ASTM A780 and as specified in approved working drawings, at no additional cost to the Department.
 4. **Backfill Retention Material:** Backfill retention materials shall be wire mesh, expanded metal sheets, metal hardware cloth, or a combination thereof and galvanized in accordance with AASHTO M 111 (ASTM A123). The size of this material shall be determined by the wall designer to prevent backfill from spilling out the front face of the wall. Retention geotextile with rock facing material will not be allowed.
 5. **Handling, Storage, and Shipping:** Care shall be taken when loading and unloading the reinforcement and facing materials as to not damage any steel or coatings. The material shall be stored on the project as to minimize any potential damage and/or mud contamination. Reinforcing, facing elements, and attachment devices that do not meet the manufacturer's requirements and are not free of defects shall be rejected (i.e. bent reinforcement, damaged coatings, etc.).
- B. Granular Backfill for MSE Wire Face Wall:** All backfill material used in the structure volume shall be reasonably free from organic and deleterious material. The backfill material shall be obtained from crushed natural sources conforming to the following gradation limits as determined by SD 202 using the surface course materials procedure:

<u>Sieve Size</u>	<u>Percent Passing</u>
1-1/2 inches	100
3/8 inch	0-15
No. 200 mesh sieve	0-10

The backfill shall conform to the following additional requirements:

1. **Plasticity Index:** The plasticity index (P.I.) as determined by SD 207, shall not exceed 2.
2. **Internal Angle of Friction:** The material shall exhibit an angle of internal friction of not less than 34 degrees, as determined by the standard Direct Shear Test, AASHTO T 236, on the portion finer than the No. 10 sieve.

3. **Soundness:** The materials shall be free of soft, poor durability particles. The material shall have a sodium sulfate soundness loss of less than 15 percent after five cycles determined in accordance with AASHTO T 104 or SD 220.
4. **Electrochemical Requirements:** The backfill materials shall meet the following criteria:

Requirements	Test Methods
Resistivity > 3,000 ohm centimeters	AASHTO T 288
ph 5-10	AASHTO T 289
Sulfates < 200 parts per million	AASHTO T 290
Chlorides < 100 parts per million	AASHTO T 291

If the resistivity is greater than or equal to 5,000 ohm-cm, the chloride and sulfates requirements may be waived.

5. **Strength and Chemical Requirements:** The following aggregates meet the above strength and chemical parameters: Minnekahta Limestone, Sioux Quartzite, and Ortonville Granite.
6. **Design Parameters:** Direct shear tests performed on the above aggregates indicate an internal friction angle = 47 degrees, and cohesion = 0. No reduction or safety factors have been applied to these values. A value greater than the standard 34 degrees for the internal friction angle can be used at the wall designer's discretion. A dry unit weight = 105 pcf shall be used for the Granular Backfill for MSE Wire Face Wall.
- C. **Acceptance of Material:** The Contractor shall furnish the Engineer a Certificate of Compliance certifying all materials, including Granular Backfill for MSE Wire Face Wall if other than Minnekahta Limestone, Sioux Quartzite, or Ortonville Granite, comply with the applicable contract specifications. A copy of all test results performed by the Contractor necessary to ensure contract compliance shall also be furnished to the Engineer.

Acceptance of the materials other than Granular Backfill for MSE Wire Face Wall will be based on the Certificate of Compliance, accompanying test reports, and visual inspection by the Engineer. Acceptance of the Granular Backfill for MSE Wire Face Wall will be in accordance with the Department's Materials Manual.

III. CONSTRUCTION REQUIREMENTS

- A. **Construction Plans, Shop Plans, and Design Calculations:** The Contractor shall consult with an approved MSE wall company and obtain design

calculations and construction plans. These plans shall be signed/sealed by a South Dakota Registered professional engineer. At least 30 calendar days prior to fabrication or construction, the Contractor shall submit construction plans, shop plans, and design calculations for the Department's review and approval. Construction plans shall include plan view, elevation view, typical cross sections, material and construction specifications, and a detailed quantity list consisting of actual quantities for: Structure Excavation, Retaining Wall (Cu. Yd.), Foundation Preparation, Retaining Wall (Cu. Yd.), MSE Wire Face Wall (Sq. Ft.), and Granular Backfill for MSE Wire Face Wall (Cu. Yd.). The Contractor shall send an email with the construction plans, shop plans, and design calculations attached as a PDF to the Project Engineer and Office of Bridge Design. Upon request, the Project Engineer will provide the Contractor the appropriate email addresses. The Contractor shall not begin fabrication or any construction prior to the Department's review and final approval of the construction plans, shop plans, and design calculations. Within 30 calendar days of receiving the initial construction plans, shop plans, and design calculations; the Office of Bridge Design will send a response to the Contractor and submitter with the Department's final approval or one reviewed copy of the construction plans, shop plans, and design calculations with changes marked. The Contractor will make the necessary changes, if any, to the construction plans, shop plans, and design calculations. The Contractor will then send the Project Engineer and the Office of Bridge Design an email with the final construction plans, shop plans, and design calculations as a PDF for distribution.

- B. Structure Excavation, Retaining Wall:** This work shall consist of the necessary excavation for erection of the retaining wall system. Structure excavation shall be in reasonably close conformity to the limits shown on the typical section located within the plans.
- C. Foundation Preparation, Retaining Wall:** The foundation area for the retaining wall shall be excavated to the limits depicted within the plans or as directed by the Engineer. Backfill material shall be as specified in the plans.
- D. Wall Erection:** A field representative from the proprietary wall system shall be at the job site at the start of wall construction and as needed to resolve wall construction problems. Before wall construction begins, a pre-construction conference shall be held to cover proper wall construction techniques. Personnel at this meeting shall include, but not be limited to, State Project personnel, Contractor personnel, State Geotechnical Engineering Activity personnel, and a field representative from the proprietary wall company. The field representative shall also be present during the placement and backfilling of the first two complete rows along the length of the wall, or until the backfill, compaction, and wall batter operations have been optimized. The decision of when the operations have been optimized

will be at the sole discretion of the Engineer. The services of the field representative shall be incidental to the wall cost.

Soil reinforcing and applicable facing materials shall be placed in successive horizontal lifts as backfill placement proceeds. The horizontal wall placement shall be within plus/minus two inches from plan specified alignment. The vertical alignment shall be within two inches in ten feet, not to exceed six inches for the total height of the wall, when measured from the plan specified vertical alignment. No negative batter measured from vertical will be allowed.

Construction of the wall shall begin at the lowest course and proceed upwards. The entire lowest course must be placed and backfilled prior to the construction of any of the subsequent course. Backfill placement must be in successive horizontal lifts as reinforcement placement proceeds. Deviation from these requirements will require a submittal of the proposed erection plan, including how to retain backfill material laterally without undermining wall reinforcement, to the Bridge Construction Engineer for approval a minimum of 30 days prior to beginning construction on the wall.

The underdrain system, if applicable, shall be placed prior to wall backfill placement. The underdrain system shall provide positive drainage from the wall backfill. If the permanent outlet works for the underdrain system is not installed or unable to be installed, a temporary outlet works for the underdrain system shall be constructed until the permanent outlet works can be constructed to prevent water from backing up in the wall backfill material.

Reinforcement elements shall be placed normal to the face of the wall, unless otherwise shown on the plans. Prior to placement of the reinforcing elements, backfill shall be compacted according to these specifications.

The finished grade backfill in front of the wall shall be placed and compacted to a minimum of 97% of maximum dry density as determined by SD 104. For walls in excess of 20 feet in height, the finished grade in front of the wall shall be placed and compacted before wall construction exceeds a height of 20 feet.

- E. Backfill Placement:** Backfill placement shall closely follow erection of each course of facing component. Backfill shall be placed to avoid any damage or disturbance of the wall materials or misalignment of the facing. Any wall materials which become damaged or disturbed during backfill placement shall be either removed and replaced at the Contractor's expense or corrected as directed by the Engineer. Backfill placement methods near the facing shall ensure that no voids exist, especially beneath the reinforcing elements.

The moisture content prior to and during compaction shall be uniform throughout each layer. Water shall be applied at a minimum rate of 0.25

gal/ft² of surface area per lift. The Contractor shall increase this rate, when ordered by the Engineer, to ensure the lift is fully saturated.

The maximum lift thickness prior to compaction shall not exceed eight inches. The Contractor shall decrease this thickness, when ordered by the Engineer, to obtain the required density.

Compaction shall be achieved by at least four passes by a heavy vibratory roller. If adequate compaction is not achieved using the selected roller, the size of the roller shall be increased as directed by the Engineer.

The maximum lift thickness prior to compaction within three feet of the back face of the wall facing shall not exceed four inches. At least two lifts shall be completed within this area per each lift beyond three feet of the back face of the wall facing.

Compaction within three feet of the back face of the wall facing shall be achieved by at least three passes of a lightweight mechanical tamper, roller, or vibratory system.

At the end of each day's operation, the Contractor shall slope the last course of the backfill away from the wall facing to rapidly direct runoff away from the wall face. The Contractor shall not allow surface runoff from adjacent areas to enter the wall construction site.

The embankment immediately behind the wall reinforcement shall be brought up evenly with the Granular Backfill for MSE Wire Face Wall, or benched in accordance with Section 120.3.B.1 of the Standard Specifications for Roads and Bridges.

Backfill shall not be constructed on frozen ground and frozen material shall not be used in the construction of the MSE Wire Face Wall. The use of ground heaters, blankets, warmers, or other apparatuses may be used at the approval of the Engineer.

IV. METHOD OF MEASUREMENT

Plan shown quantities are for bidding purposes only. Construction plans quantities will be the measurement for payment. Field measurements will not be made, unless the Department determines that conditions warrant such measurement.

A. Structure Excavation, Retaining Wall will be measured to the nearest cubic yard.

- B. Foundation Preparation, Retaining Wall** will be measured to the nearest cubic yard.
- C. Granular Backfill for MSE Wire Face Wall** will be measured to the nearest cubic yard.
- D. MSE Wire Face Wall** will be measured to the nearest square foot. The area of retaining wall to be used for payment shall be the area bounded by the top of wall, bottom of wall elevations and the beginning and end wall limits as shown on the construction plans.

V. BASIS OF PAYMENT

- A. Structure Excavation, Retaining Wall**, will be paid for at the contract unit price per cubic yard. Payment will be full compensation for equipment, labor, tools and incidentals required to complete the work.
- B. Foundation Preparation, Retaining Wall** will be paid for at the contract unit price per cubic yard. Payment will be full compensation for equipment, labor, tools, and incidentals required for excavating and disposal of the excavated material; equipment, labor, materials, and all other items incidental to scarifying, reshaping, and recompacting the area to be backfilled; and incidentals for furnishing, placing, watering, and compacting backfill material.
- C. Granular Backfill for MSE Wire Face Wall** will be paid for at the contract unit price per cubic yard. Payment will be full compensation for equipment, labor, materials and all other items incidental to placing, watering, and compacting the granular material to the limits shown on the construction plans.
- D. MSE Wire Face Wall** will be paid for at the contract unit price per square foot. Payment will be full compensation for all materials, equipment, labor, and all other incidentals required to furnish and install the wall including the underdrain system as detailed on the construction plans.

The acceptable wire face wall suppliers are listed on the approved products list on the South Dakota DOT website.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
DYNAMIC PILE MONITORING AND
STATIC PILE LOAD TESTING**

**PROJECT NH PS 0012(187)106, PCN 04FL
CORSON COUNTY**

OCTOBER 29, 2021

I. DESCRIPTION

This work will consist of furnishing all labor, equipment, materials and qualified personnel necessary to conduct dynamic monitoring and static load testing of driven piles in accordance with this special provision at locations designated in the plans or as directed by the Engineer.

The purpose of this testing program is to obtain load deflection and load transfer data required to accurately determine the nominal resistance of the pile under static loading conditions for comparison and correlation with dynamic driving data predictions and subsequent calibration of Load and Resistance Factor Design (LRFD) load factors based on local practice.

Four test piles will be driven by the Contractor at Str. No. 16-083-011. Two will be located adjacent to the bridge and two are part of the normal production piling for the bridge. Dynamic monitoring and static load testing of two HP 12 X 53 steel test piles along with the dynamic monitoring of two HP 12 X 53 steel production piling will be performed by the Contractor.

The Contractor will engage the services of a specialty subcontractor experienced in high-strain dynamic monitoring and static load testing of driven piles to perform the tasks listed in this special provision and report results to the Department. The specialty subcontractor will have at least five years of documented experience in the performance and interpretation of dynamic and static pile testing. The individual responsible for operating the instrumentation will be under the direct supervision of a licensed Professional Engineer registered in the state of South Dakota and be fully capable of understanding and interpreting the data being collected. The specialty subcontractor will be selected by the Contractor and submitted for approval, by the Engineer, a minimum of 30 days prior to work beginning.

Approval will be based upon qualifications and applicable previous experience on other projects.

II. MATERIALS

Pile will conform to ASTM A572 grade 50.

III. PROCEDURE

STR. NO. 16-083-011:

One 40 foot and one 30 foot HP 12 X 53 steel pile will be driven in the test area adjacent to the proposed bridge location. The pile lengths are based upon a ground elevation of 2397 within the test pile area, an anticipated tip elevation of 2362 to obtain nominal resistance, and an additional 5' in length for attachment of monitoring gauges, etc.

TP 1 – 40 foot test pile: This pile will be driven first. Drive to 245 tons of nominal resistance as indicated by the dynamic test equipment or as directed by the Engineer.

TP 2 – 30 foot test pile: Drive to depth ordered by the Engineer. Tip elevation will be approximately 10 ft higher than TP 1.

These piles will be allowed to setup for 7 days. After the 7 day setup, the Contractor will restrike each of the test piles. Restrike will be accomplished with the same hammer used during installation.

After completion of the restrike, the piles will again be allowed to setup for 7 days. On the 7th day the Static Load Testing of TP 1 and TP 2 will begin. Static load testing of TP 1 and TP 2 will be accomplished prior to driving the piling for the abutments.

TP 3 – 65 foot test pile that will become part of abutment No. 1 pile group. TP 3 will be the first piling driven in abutment No. 1. Drive pile to 245 tons of nominal resistance as indicated by the dynamic test equipment or as directed by the Engineer.

TP 4 – 65 foot test pile that will become part of abutment No. 4 pile group. TP 4 will be the first piling driven in abutment No. 4. Drive pile to 245 tons of nominal resistance as indicated by the dynamic test equipment or as directed by the Engineer.

The remainder of the production piling in the abutments will be driven to a field verified nominal bearing resistance of 245 tons per pile as determined by SDDOT's pile driving formula. Piling will be driven in one continuous operation

with no allowance for delayed bearing set up or to a tip elevation as directed by the Engineer.

The contractor will review the subsurface sheet to determine pile splice sequencing based on anticipated pile contact with the bedrock. It will be required the shorter section of pile is driven first so false bearing and setup is not obtained during welding operations.

A. Dynamic Pile Monitoring:

All equipment, testing, and reporting procedures will be provided and performed in accordance with ASTM D4945 – *Standard Test Method for High-Strain Dynamic Testing of Deep Foundations*.

The specialty subcontractor will perform preconstruction wave equation analyses and prepare a summary report of the results. The wave equation analyses will be used to assess the ability of all proposed pile driving systems to install piles to the required capacity and the desired penetration depth within allowable driving stresses. The report will include a drivability graph relating pile capacity, blow count and driving stresses to depth. The report will include a bearing graph relating the pile capacity to the pile driving resistance. The bearing graph will indicate blow count versus capacity and stroke. The report will also contain a constant capacity analysis or inspectors' chart to assist the Engineer in determining the required driving resistance at other field observed strokes. Acceptability of the wave equation report and the adequacy of analyses will be determined by the Department's Geotechnical Engineer.

Dynamic pile testing field measurements will be carried out using approved equipment, software, and recording equipment. The data collected at the end of initial driving and the beginning of restrike will be analyzed using approved signal matching techniques and software.

The Contractor will drive the test pile to the penetration depth at which the dynamic test equipment indicates that the nominal resistance required in the plans has been achieved. The testing equipment will monitor pile stresses during driving to prevent pile damage and ensure pile integrity and capacity. If the testing equipment indicates overstressing or damage to the pile, the Contractor will immediately discontinue driving and notify the Engineer.

If the testing equipment determines that pile stresses during driving exceed acceptable levels, a new pile driving system, modifications to existing system, or new pile installation procedures will be proposed by the Contractor. Changes or modifications to the approved pile driving system will require additional wave equation analyses and approval by the Department's Geotechnical Engineer.

All field testing and measurements will be made in the presence of the Engineer.

Monitoring of pile driving will begin when pile driving begins. The data will be recorded and processed immediately in the field by the pile driving monitoring equipment and software. Unless monitoring indicates that additional driving will damage the pile, pile driving and monitoring will continue until the specified pile capacity is reached. For each pile tested, pile driving analysis using signal matching techniques will be performed for a selected blow at the end of driving to determine the relative capacities from end bearing and skin friction along the pile.

Restrike tests will be performed on the test piles. The time interval between the end of initial driving and the beginning of restrike for the test piles adjacent to the bridge will be 7 days. The time interval between the end of initial driving and the beginning of restrike for the two production piling in the abutments will be 24 hours.

During restrike, the pile will be instrumented and monitored similar to during initial driving. For each restrike test, pile driving analysis using signal matching techniques will be performed for a selected blow from the beginning of restrike to determine the relative capacities from end bearing and skin friction along the pile.

The hammer will be warmed up before restrike begins by applying at least 20 blows to another pile or other fixed object. The restrike test will consist of striking the pile for 20 blows, until the pile penetrates an additional 3 inches, or as directed by the Engineer. If testing equipment indicates overstressing or damage to the pile, the Contractor will immediately discontinue driving and notify the Engineer.

Case Pile Wave Analysis Program (CAPWAP) analyses will be performed for all initial drives and restrikes of dynamically tested piles. A minimum of one CAPWAP analysis will be performed for a representative blow near the end of each initial drive and towards the beginning of the restrike.

Within 14 working days of the completion of the static load testing, the Contractor's specialty subcontractor will submit to the Department a report meeting the requirements of this special provision that is signed and sealed by a Professional Engineer licensed in the State of South Dakota. In addition to the raw data and ASTM D4945 requirements, the report will include detailed results of the CAPWAP analyses including, but not limited to, all extrema tables; pile profile and pile model tables; simulated load test curves for the tip and top of the pile; the soil parameters used in the analysis by matching the measured and computed values of forces, velocities, and displacements; and static resistance distribution along the length of the pile,

in a format approved by the Department's Geotechnical Engineer.

If the Contractor's pile driving schedule does not allow the dynamic monitoring results and all supporting data for the production piling to be included in the report submitted for the static load test pile, an additional report will be submitted within 7 working days of the completion of the last dynamic test.

All raw data and computer analyses will be made available in electronic format to the Department for additional analysis.

B. Static Load Test:

Equipment and materials will be of sufficient size and strength to apply an axial load greater than the yield capacity of the pile section.

All welding will conform to the latest addition of the AWS D1.5 Bridge welding code.

All equipment, testing and reporting procedures will be provided and performed in accordance with ASTM D1143 – *Standard Test Methods for Deep Foundations Under Static Axial Compressive Load*

A static load test will be conducted on five non-production test pile at the location shown on the plans in accordance with ASTM D1143, Quick Load Test Method.

The top elevation of all test piles will be determined immediately after driving and again just before load testing to check for heave. A pile which heaves more than 1/4 in. will be redriven, or jacked, to the original elevation prior to testing.

The Contractor will furnish and construct a suitable reaction frame to provide a load greater than the ultimate strength of the pile section. Load will be applied to the pile by jacking against the reaction frame using one or more hydraulic jacks. If multiple jacks are used, they must be connected in parallel and calibrated together.

A minimum of four symmetrically arranged anchor piles will be required. The anchor piles will be installed after installation of the test pile and located as far from the test pile as practical but in no case closer than 8 feet from the edge of the test pile. The length of anchor piles will be determined by the Contractor.

A minimum of 30 days prior to driving the static load test pile the Contractor will submit, for review and approval, detailed plans for the reaction frame and loading apparatus including the distances between the load test pile and

all reaction piles and reference beam supports. The submittal will also include a proposed load test and reaction pile driving sequence, a scaled drawing of the loading apparatus detailing the ground surface elevation, the pile cutoff elevation, and the dimensions and locations of all bearing plates, the jack, the load cell, the spherical bearing plate, and the reaction beam. Plans for the reaction frame and loading apparatus will be designed and stamped by a Professional Engineer licensed in the State of South Dakota. The submittal will include calibration certifications for the hydraulic jacks, load cell, pressure gauges, and hydraulic pumps conducted within 60 days of the load test.

The loading apparatus will be constructed to allow the various increments of the load to be placed gradually, without causing vibration to the test pile. The primary method of determining the applied load will be from a calibrated load cell. Support for the load test plates, jack, and ancillary devices will be provided to prevent them from falling in the event of a release of load due to hydraulic failure, test pile failure, or other cause.

Hydraulic jacks and pressure gauges will be used for the superimposed load. The jacks, pressure gauges, load cell, and hydraulic pumps will be calibrated with each other within 60 days prior to the load test by an independent laboratory. When a jack, pressure gauge, load cell, and hydraulic pump are calibrated, they will be calibrated and used as a unit. All calibration checks will be within 5% of the applied load. Changing one of the four components will require recalibration prior to use. Pressure gauges will be a minimum of 4 1/2 in. in diameter with gradations in accordance with ASTM D1143. Hydraulic jacks will have a nominal load capacity exceeding the maximum anticipated jack load by at least 20%. The jack, pump, and any hoses, pipes, fittings, gauges, or transducers used will be rated to a safe pressure corresponding to the nominal jack capacity. Calibrated jacks, gauges and pumps will have identifiable serial numbers to insure traceability to calibration tests.

A primary and secondary monitoring system will be used to measure the vertical movement of the pile. The primary system will utilize linear variable differential transformers (LVDT) or dial gauges. The secondary system will consist of either dial gauges (if LVDT are used for the primary system) or a wire, mirror, and scale.

Pile compression and strain measurements will be collected during the static load test. The Contractor will supply and attach telltales and strain gauges to the test piles. Two pile telltales will be installed in each test pile to monitor the deflection of the pile base. A minimum of four vibrating wire strain gauges will be attached to each test pile; one near the top, one near the bottom, and two at locations along the pile length as recommended by the specialty subcontractor and detailed in the submittal for approval. Readings of tip

movement and pile strain will be taken simultaneously with the measurements of applied load and movement. Details and data collection procedures for determining the pile compression and measuring the strain in the pile will be included in the Contractor's submittal.

The Contractor will provide site protection for the reaction frame, reaction pile supports, static load test pile and reference beam from wind, direct sunlight, and other disturbances such as temperature extremes as required by the specialty subcontractor.

Within 14 working days of the completion of the static load testing, the Contractor's specialty subcontractor will submit to the Department a report meeting the requirements of this special provision that is signed and sealed by a Professional Engineer licensed in the State of South Dakota. In addition to all the raw data and ASTM D1143 requirements, the report will include but not limited to a plot of the load settlement curve superimposed with the Davisson failure criteria, in a format approved by the Engineer.

All raw data and computer analyses will be made available in electronic format to the Department for additional analysis. The Contractor's specialty subcontractor will be available with respect to any questions that may arise.

Upon completion of the static load test, test and anchor piles will be removed or cut off at least one foot below the finished ground elevation. The area will be restored to the satisfaction of the Engineer.

IV. METHOD OF MEASUREMENT

A. Dynamic Pile Test (during driving): Dynamic pile test (during driving) will be measured on a per each basis.

B. Dynamic Pile Test (during restrike): Dynamic pile test (during restrike) will be measured on a per each basis.

C. Static Pile Load Test: Static pile load test will be measured on a per each basis.

V. BASIS OF PAYMENT

A. Dynamic Pile Test (during driving): Dynamic pile test (during driving) will be paid for at the contract unit price per each. All costs associated with the dynamic pile test (during driving) except the cost of furnishing and driving the pile and restrike will be included in the cost of the dynamic pile test (during driving). Payment will be full compensation labor, equipment, and materials needed to perform the test as specified and the preparation of the report.

B. Dynamic Pile Test (during restrike): Dynamic pile test (during restrike) will be paid for at the contract unit price per each. All costs associated with the dynamic pile test (during restrike) will be included in the cost of the dynamic pile test (during restrike). Payment will be full compensation labor, equipment, and materials needed to perform the load test as specified and the preparation of the report.

C. Static Pile Load Test: Static pile load test will be paid for at the contract unit price per each. All costs associated with the static pile load test except the cost of furnishing and driving the test pile will be included in the cost of the static pile load test. Payment will be full compensation for furnishing and constructing the reaction frame, supplying and driving the anchor piles, labor, equipment, and other materials needed to perform the load test as specified and the preparation of the report.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CONCRETE PENETRATING SEALER**

FEBRUARY 22, 2010

I. DESCRIPTION

This work consists of furnishing and applying a concrete penetrating sealer to a properly prepared bridge deck surface in compliance with these specifications and the manufacturer's recommendations.

II. MATERIALS

The acceptable sealers are listed on the approved products list for Bridge Deck Sealants on the SDDOT Website.

The Contractor shall furnish the Engineer the manufacturer's technical data sheets, materials safety data sheet (MSDS), and sufficient evidence that the material to be used has not exceeded the manufacturer's specified shelf life. This documentation shall be furnished to the Engineer a minimum of 5 days prior to application of the sealer.

III. CONSTRUCTION REQUIREMENTS

A. Surface Protection and Preparation: The concrete deck surface shall be protected from contamination from dirt and debris by covering the deck with a material approved by the Engineer until such time that the surface preparation for the penetrating sealer is begun. Any materials or equipment placed on the deck during this protection period shall be placed such that there is no danger of spillage, leakage, or other contamination to the concrete surface.

Concrete surfaces shall be cleaned by power washing such that all traces of laitance, dirt, dust, salt, oil, asphalt, paint, and other foreign materials and deleterious substances are removed prior to application of the penetrating sealer. In the event that oil, grease, or other contaminants are inadvertently spilled on the concrete surface, detergent cleaning along with an abrasive blast cleaning will be required on the affected areas.

Other methods and equipment for surface preparation may be used if prior approval is obtained from the Engineer.

If necessary, solvents and hand tools shall be used in conjunction with the blasting media to remove bonded materials detrimental to the treatment of the concrete surface.

The cleaning process shall not cause undue damage to the concrete surface, remove or substantially alter the existing surface finish, or expose the coarse aggregate of the concrete. The method of cleaning shall be performed in such a manner as to provide a reasonably uniform appearing surface color and texture.

The sealer may be harmful to materials such as rubber, asphalt, and joint compounds; therefore, the Contractor shall be required to mask off all joints, strip seals, etc. prior to applying the sealer.

The Engineer shall approve the prepared surface prior to application of the penetrating sealer.

- B. Sealer Application:** The Contractor shall have a sufficient quantity of sealer on the project prior to the start of application such that the manufacturer's maximum rate of coverage (minimum ft²/gal) can be attained. Sealer application shall conform to the manufacturer's recommendations and the following:

- 1. Weather Limitations:** The penetrating sealer shall only be applied when the ambient air and concrete surface temperatures are between 40° F and 100° F unless otherwise recommended by the manufacturer. The treatment solution shall not be sprayed when blowing winds or other conditions prevent proper application.

The sealer shall not be applied during inclement weather or rain, or if inclement weather or rain is anticipated within 24 hours.

- 2. Application Equipment:** Spray equipment for the application of the treatment solution shall be a low-pressure airless type sprayer with a maximum application pressure of 15 psi.
- 3. Application:** Concrete shall be cured for 28 days prior to the application of the sealer. The sealer may be applied prior to the 28 day cure period, but no sooner than 14 days, provided that there is no evidence of moisture in the concrete when tested in accordance with ASTM D4263 and the concrete has attained 80% of the specified design strength.

All surfaces shall be substantially dry prior to application of the sealer. The concrete surfaces shall be allowed to dry a minimum of 3 days after powerwashing or precipitation. The Engineer will determine when the surface is sufficiently dry.

All loose dust and debris shall be blown off of the concrete surface with compressed air immediately prior to application of the sealer.

The sealer shall be used as supplied by the manufacturer and shall not be diluted or altered in any way.

The solution shall be sprayed on to the concrete surfaces at the manufacturer's recommended maximum rate of coverage (minimum ft²/gal) or to refusal, whichever is achieved first. Refusal is defined such that additional spray applications remain on the concrete surface and do not soak in, as determined by the Engineer.

If the plans specify a grooved bridge deck surface, the grooving shall be accomplished prior to the application of the sealer.

4. **Traffic Limitations:** Traffic will not be permitted on treated surfaces nor shall pavement markings be applied until the solution has completely penetrated and the treated surface is dry. The Engineer will determine when the surface is sufficiently dry.

IV. METHOD OF MEASUREMENT

Concrete Penetrating sealer will be measured to the nearest 0.1 square yard.

V. BASIS OF PAYMENT

Concrete Penetrating sealer will be paid for at the contract unit price per square yard. Payment will be full compensation for equipment, labor, materials, and all other incidental items required to prepare the concrete surfaces, and to furnish and apply the penetrating concrete sealer.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
ASPHALT SURFACE TREATMENT DESIGN**

NOVEMBER 19, 2015

Delete Section 360.3 C of the specifications and replace with the following:

C. Cover Aggregate Preparation and Asphalt Surface Treatment Design:

Sampling and submitting of the cover aggregate, in accordance with Section 6.3, is required for the asphalt surface treatment design process and quality testing. The Contractor shall notify the Area office a minimum of 5 calendar days prior to sampling the cover aggregate.

After at least 50% of the aggregate is stockpiled at each stockpile site and a minimum of 14 calendar days prior to beginning the asphalt surface treatment, the Contractor must submit a sample of the cover aggregate to the asphalt supplier for evaluation of compatibility.

The Area office representative or, in accordance with Section 6.3, the Contractor will submit a sample of the cover aggregate for quality test verification to the Department's Bituminous Engineer. At the same time, the Contractor shall submit copies of the cover aggregate production samples including, but not limited to; gradation, flakiness index, plasticity index, LA abrasion loss, soundness loss, and crushed particles tests, to the Engineer and the Department's Bituminous Engineer.

Satisfactory quality test results for the cover aggregate must be obtained prior to use on the project.

If a change in source of cover aggregate is necessary as a result of the compatibility verification, the asphalt surface treatment design, or quality testing; the Contractor must obtain a new sample of cover aggregate and the Area office representative or, in accordance with Section 6.3, the Contractor will submit the sample to the Department's Bituminous Engineer using the same procedures as stated above.

At least 7 calendar days prior to beginning the asphalt surface treatment, the Contractor must submit an emulsified asphalt sample, a copy of the compatibility test results, and the asphalt surface treatment design to the Engineer and the Department's Bituminous Engineer for approval by the Department's Bituminous Engineer.

The asphalt surface treatment will be designed in accordance with the Modified McLeod Design Procedure attached to this special provision. The asphalt surface treatment design will be prepared by qualified personnel experienced in asphalt surface treatment design.

The asphalt surface treatment design will be based on traffic volume(s) and pavement conditions contained in the plans and materials meeting the specified requirements. The final application rate for the emulsified asphalt and cover aggregate will be determined after the source of the material is known and field adjustments are made. The asphalt surface treatment design will include the following information:

- 1) Cover aggregate gradation.
- 2) Bulk specific gravity of the cover aggregate.
- 3) Loose unit weight of the cover aggregate.
- 4) Emulsified asphalt type
- 5) Emulsified asphalt rate of application.
- 6) Cover aggregate rate of application.

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ATTACHMENT 1

Modified McLeod Design Procedure

I. Asphalt Surface Treatment Design General

Asphalt surface treatments shall be designed so the proposed materials are of sufficient quality and have the desired properties to provide the expected performance. Proper design also ensures the proper application rates are being used. The design procedure presented herein is a modified version of the McLeod design procedure (McLeod 1969, Janisch and Gaillard 1998).

The procedure is based on two basic principles:

- The aggregate application rate is designed to provide an asphalt surface treatment that is one stone thick (i.e., there should be a single layer of uniformly sized chips) with minimal excess.
- The voids in the aggregate are designed to be 70% filled with asphalt cement for good performance (i.e., the chips should be 70% embedded).

II. Emulsion Properties

Residual Asphalt Content: A portion of an asphalt emulsion consists of water, which evaporates as the binder breaks. The amount of asphalt cement that remains after breaking is referred to as the residual asphalt content. It is important to consider the residual asphalt content because it represents the amount of material that is available for bonding to the cover aggregate. In general, the residual asphalt content is about 64 to 70% (i.e., 64 to 70% of an asphalt emulsion consists of asphalt cement).

As mentioned, the objective of this design procedure is to achieve 70% embedment of the average-sized aggregate. To accomplish this, the emulsion must be at the top of the average-sized aggregate before curing. If only 70% of the cover aggregate is covered initially, the asphalt height will be about 30% too low after curing.

III. Aggregate Properties

Median Particle Size: The median particle size is the theoretical size through which 50% of the material passes. It is determined from the gradation chart using the following sieve sizes: 1 inch, 3/4 inch, 1/2 inch, 3/8 inch, 1/4 inch, #4, #8, #16, #50, and #200.

Flakiness Index (SD 203): The Flakiness Index is a measure of the percentage, by weight, of flat particles. It is determined by testing a sample of aggregate particles for their ability to fit through a slotted plate. The weight of the material passing the slots is divided by the total weight of the aggregate sample to determine the percent of flat particles or Flakiness Index.

Average Least Dimension: The average least dimension represents a reduction of the median particle size after accounting for the amount of flat particles. It represents the asphalt surface treatment thickness in the wheel path after traffic has reoriented the chip on their flattest side. It is determined from the median particle size and flakiness index using the following equation:

$$H = \frac{M}{1.139285 + 0.011506FI}$$

Where:

H = Average least dimension, inch

M = Median particle size, inch

FI = Flakiness index, %

Loose Unit Weight (SD 205): The loose unit weight is required in order to determine the voids in the aggregate in a loose condition. The voids represent the available space for the asphalt binder after placement and rolling. The loose unit weight is a function of the gradation, shape, and specific gravity of the aggregate.

Bulk Specific Gravity (SD 209 and SD 210): Bulk specific gravity represents the weight of aggregate as compared to the weight of water. Different aggregate types have different unit weights or specific gravities. This factor affects the application rate of the aggregate chips because a heavier aggregate will require more weight of chips (or a higher application rate) than a lighter aggregate to cover the same area. Bulk specific gravities for aggregates typically range from 2.40 to 3.00. Natural aggregates are generally about 2.40, and quartzite and limestone aggregates are generally around 2.60.

Voids in the Loose Aggregate (SD 205): The voids in the loose aggregate represent the voids after the aggregate chips are placed on the pavement. It is based on the loose unit weight and can be determined using the following equation:

$$V = 1 - \frac{W}{62.4G}$$

Where:

V = Voids in the loose aggregate

W = Loose unit weight of the aggregate chips, pounds / cubic foot

G = Bulk specific gravity of the aggregate

For one-sized chips, this factor will typically be around 50 percent. Rolling will reduce the amount of voids, typically to around 30 percent. Traffic will further reduce the amount of voids to around 20 percent.

Aggregate Absorption (SD 209 and SD 210): Aggregates, especially porous aggregates, will absorb a portion of the asphalt emulsion. This will affect the amount of asphalt binder that is available for bonding with the aggregate chips. To ensure that enough binder remains, this factor must be taken into account when designing the emulsion application rate. An absorption correction factor of 0.02 gallons per square yard is recommended for aggregates with absorption greater than 1.5%. Quartzite is generally not too absorptive and will not require an adjustment. Some limestone and natural aggregates, however, may require an adjustment to the emulsion application rate.

IV. Other Design Properties

Traffic Volume: The traffic volume will influence the amount of asphalt binder that is required to provide sufficient embedment of the aggregate chips. All other factors equal, roadways with higher traffic volumes will require less residual asphalt. This may appear to be the opposite of what is typically expected. However, consider that traffic causes a reorientation of the chips until they eventually lie on their flattest side. More traffic thus results in a greater probability that the chips will be laying on their flattest side and will result in a thinner asphalt surface treatment. Less traffic will result in a thicker asphalt surface treatment and will thus require more asphalt binder to achieve sufficient embedment. The table below provides the recommended traffic correction factor to be used in determining the emulsion application rate. Failure to account for this factor will result in bleeding in the wheel paths.

Table 1 - Recommended Traffic Correction Factors

Traffic (ADT)	Traffic Factor
<100	0.85
100-500	0.75
500-1000	0.70
1000-2000	0.65
>2000	0.60

Traffic Whip-Off: A portion of the aggregate chips will get thrown off the roadway before final curing and embedment under traffic has occurred. This is accounted for in the procedure using a traffic whip-off factor. The factor is based on the traffic volume and traffic speed of the roadway. Low-volume, residential streets will have about a 5% loss, whereas the loss on high-volume, high-speed roadways will be around 10%. The factor can be computed using the following equation:

$$E = 1 + \frac{P}{100}$$

Where:

E = Traffic whip-off factor

P = Expected loss of aggregate chips, %

Thus, an expected loss of 10% results in a traffic whip-off factor of 1.10.

Existing Pavement Condition: The surface condition of the existing pavement will greatly influence the amount of asphalt emulsion that is required. A dry, porous pavement will absorb a tremendous amount of asphalt binder and thus affect the emulsion application rate. Conversely, a new pavement (or a pavement with bleeding on the surface) will absorb much less binder. The varying condition is accounted for in the design procedure by the surface correction factor. The recommended value, based on the pavement surface texture, is provided in Table 2.

The same application rate cannot be used for all roadways with varying conditions. Similarly, the surface condition should be monitored during placement, and the application rate adjusted as needed to address areas of differing condition.

Table 2 - Recommended Surface Correction Factors

Existing Pavement Surface Texture	Surface Correction Factor, gallons / square yard
Black, flushed asphalt	-0.01 to - 0.06
Smooth, non-porous	0.00
Slightly porous and oxidized	+0.03
Slightly pocked, porous, and oxidized	+0.06
Badly pocked, porous, and oxidized	+0.09

V. Design Equations

Once the inputs are determined, the application rates can be calculated using the McLeod design equations. The equations for aggregate and emulsion application rates are presented below.

Aggregate Application Rate: The following equation is used to determine the aggregate application rate:

$$C = 46.8(1 - (0.4V)) \times H \times G \times E$$

Where:

C = Chip application rate, pounds / square yard

V = Voids in loose aggregate

H = Average least dimension, inch
G = Bulk specific gravity
E = Traffic whip-off factor

Emulsion Application Rate: The emulsion application rate is determined using the following equation:

$$B = \frac{2.244 \times H \times T \times V + S + A}{R}$$

Where:

B = Binder application rate, gallons / square yard
H = Average least dimension, inch
T = Traffic correction factor
V = Voids in loose aggregate
S = Surface correction factor
A = Aggregate absorption factor, gallons / square yard
R = Residual asphalt content of binder

The emulsion application rate is recalculated using the median particle size instead of the average least dimension. This new emulsion rate provides the required rate if the chips are not reoriented, and thus is more representative of the rate required outside the wheel path. The average of the two rates is then used as the starting point in the field.

VI. Example Design Problem

A 150 pound sample of quartzite aggregate has been submitted for design. The roadway has traffic levels of 2,125 vehicles per day (ADT). The pavement surface is slightly pocked, porous, and oxidized. A CRS-2 emulsion with a residual asphalt content of 66.5% will be used as the binder. Determine the emulsion and aggregate application rates for this project.

Step 1:

Determine the aggregate gradation, bulk specific gravity, and percent absorption.

Laboratory testing of the aggregate revealed the gradation as shown in Table E1. Testing in accordance with SD 209 and SD 210 indicates a bulk specific gravity of the aggregate of 2.61. The aggregate absorption based on SD 209 and SD 210 is 0.55%, so no correction is needed.

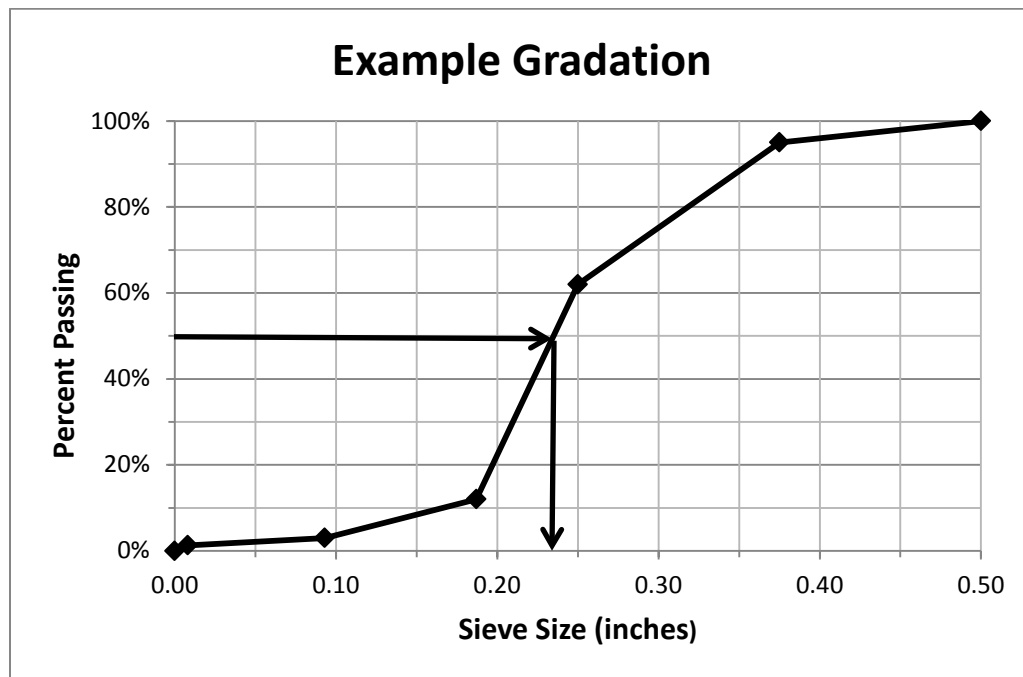
Table E1 - Gradation Test Results for Example Design Problem

Sieve Size	Percent Passing
1/2 inch	100
3/8 inch	95
1/4 inch	62
#4	12
#8	3
#200	1.3

Step 2:

Determine the mean particle size.

The median particle size (M) is determined by plotting the gradation results and reading off the sieve size at which 50% of the particles pass. The median particle size represents the theoretical size at which half the stones are larger and half are smaller.



For the given gradation, the median particle size is determined to be **0.23 inches**.

Step 3:

Determine the flakiness index.

To determine the flakiness index, the aggregate particles are fitted through slots. The results of this testing is shown in Table E2

Table E2 - Flakiness Index Test Results for Example Design Problem

Size Fraction	Weight Retained on Slot, grams	Weight Passing Slot, grams
1/2 inch to 3/8 inch	54.2	12.3
3/8 inch to 1/4 inch	123.3	43.5
1/4 inch to #4	184.4	89.5
Total	361.9	145.3

Using these results, the flakiness index (FI) is determined as follows:

$$FI = \frac{\text{Weight of Flat Chips}}{\text{Weight of Sample}} = \frac{145.3}{361.9 + 145.3} = 0.286 = 28.6\%$$

Step 4:

Determine the average least dimension.

The average least dimension (H) is the expected thickness of the asphalt surface treatment after the chips have been reoriented on their flattest side from traffic. It is determined using the following equation:

$$H = \frac{M}{1.139285 + 0.011506FI} = \frac{0.23 \text{ in}}{1.139285 + (0.011506 \times 28.6)} = 0.157 \text{ in}$$

Step 5:

Determine the loose weight of the aggregate.

A metal cylinder with a volume of 0.50 cubic feet was loosely filled with aggregate and weighed. This process was repeated three times, the results of which are shown in Table E3.

Table E3 - Loose Unit Weight Test Results for Example Design Problem

Test Number	Weight of Aggregate, pounds
1	45.25
2	45.32
3	45.29
Average	45.29

The loose unit weight (W) is then determined as follows:

$$W = \frac{\text{Weight of Aggregate}}{\text{Weight of Cylinder}} = \frac{45.29 \text{ lbs}}{0.50 \text{ ft}^3} = 90.58 \text{ lbs / ft}^3$$

Step 6:

Determine the voids in the loose aggregate.

The voids in the loose aggregate (V) is determined using the following equation:

$$V = 1 - \frac{W}{62.4 G} = 1 - \frac{90.58 \text{ lbs} / \text{ft}^3}{62.4 \text{ lbs} / \text{ft}^3 \times 2.61} = 0.44$$

Step 7:

Determine the aggregate application rate.

With the inputs determined above, the aggregate application rate (C) is determined using the following equation:

$$\begin{aligned} C &= 46.8(1 - (0.4V)) \times H \times G \times E \\ &= 46.8(1 - (0.4 \times 0.44)) \times 0.157 \times 2.61 \times 1.10 = 17.3 \text{ lbs} / \text{yd}^2 \end{aligned}$$

Step 8:

Determine the emulsion application rate.

The emulsion application rate is determined using the following equation. The calculation is performed twice, once for the wheel path areas (using the average least dimension) and again for the non-wheel path areas (using the median particle size). These calculations are shown below:

$$B = \frac{2.244 \times H \times T \times V + S + A}{R} = \frac{2.244 \times 0.157 \times 0.60 \times 0.44 + 0.06 + 0.00}{0.665} = 0.23 \text{ gal} / \text{yd}^2$$

$$B = \frac{2.244 \times M \times T \times V + S + A}{R} = \frac{2.244 \times 0.23 \times 0.60 \times 0.44 + 0.06 + 0.00}{0.665} = 0.30 \text{ gal} / \text{yd}^2$$

The average of the two results (0.27 gallons per square yard) is used as the starting point in the field.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CONTRACTOR STAKING
WITH MACHINE CONTROL GRADING OPTION**

**PROJECT NH PS 0012(187)106, PCN 04FL
CORSON COUNTY**

NOVEMBER 3, 2021

Delete Section 5.8 of the specifications and insert the following:

**SECTION 5.8
CONSTRUCTION STAKES, LINES AND GRADES
CONTRACTOR GRADE STAKING**

A. DESCRIPTION

The Contractor will perform all construction staking. The Contractor may elect to use grading equipment with an automated machine control system for Machine Control Grading (MCG) provided the equipment and methods used provide the same results in the finished work as conventional construction staking. The Engineer may require the Contractor to revert to conventional staking methods for all or part of the work at any point during construction if, in the Engineer's own opinion, the MCG produces unacceptable results.

The Department will not allow the Contractor to use MCG as a substitute for conventional construction staking for slope staking and slope stake referencing, paving hub staking, structure staking, miscellaneous staking, or final cross section surveying.

The staking work includes, but is not limited to, establishing or re-establishing the project centerline; placing an offset line to re-establish the project centerline throughout the entire project length prior to placement of asphalt surfacing; establishing control points and benchmarks as needed; setting additional benchmarks as needed; taking original and final cross sections of all Contractor secured borrow sources and State designated borrow sources; taking cross sections of all topsoil stockpiles; taking final cross sections for earthwork quantities at the slope stake stations and plus stations or by radial surveying methods; and staking right-of-way, easements, and fence.

The Contractor will perform all construction layout and reference staking necessary for the accurate control and completion of all structures, grading, paving, drainage, median crossovers, signing, pavement marking, permanent benchmarks, detours, fence, and all other appurtenances required for the complete construction and acceptance of the work. The layout will include, but is not limited to, staking clearing line, slope staking and slope stake referencing, grade staking (blue tops), structure staking, and performing the miscellaneous staking as described in the plans and in this specification.

The Department has established horizontal and vertical control as shown on the plans. Each horizontal and vertical control point will be preserved or reset out of the work limits and available during and after construction is complete. Prior to the Department's final acceptance of the project, the Contractor will replace or reset any control that is disturbed during the construction of the project. The Contractor will provide the Department a list of the in-place control points, including coordinates and elevations relevant to the project control, at the end of the project.

The Department will provide a MCG packet to all prospective bidders consisting of a XML file containing the original surface Digital Terrain Model (DTM) and 4 design files for each new alignment on the project. The electronic design files will include, a XML file containing mainline alignment data, a XML file containing mainline design surface DTM, a DGN file containing triangles for mainline surface, and a DWG file containing triangles for mainline surface. The MCG packet will be available on the Department's electronic bid letting website when the project is advertised for bid letting.

The Contractor will convert the electronic information provided by the Department into the format required by the Contractor's MCG system. The Department makes no guarantee the information provided is directly compatible with the Contractor's MCG system.

The information shown in the plans will govern over the provided electronic information. The Contractor assumes the risk of error if the information is used for any purpose for which the information was not intended. The Contractor assumes all risk of any assumptions made regarding the electronic information.

The Contractor bears all costs, including but not limited to the cost of actual reconstruction of work, that may be incurred due to errors in application of MCG techniques. Grade elevation errors, rework resulting from errors or failures of the MCG system, and associated quantity adjustments resulting from the Contractor's activities are at no cost to the Department. Delays due to late submittals or satellite reception of signals to operate the MCG system will not result in adjustment to any contract unit prices or be justification for granting contract extensions.

The electronic information is not to be considered a representation of actual conditions to be encountered during construction. Providing the Contractor this information does not relieve the Contractor from the responsibility of making an investigation of conditions to be encountered, including but not limited to, site visits and basing the bid on information obtained from these investigations and the Contractor's professional interpretations and judgment. The Contractor assumes the risk of error if the information is used for any purposes for which the information was not intended. Any assumptions the Contractor makes from this electronic information or manipulation of the electronic information is at the Contractor's own risk.

The Contractor will perform the staking work in accordance with the Department's Survey Manual, except as modified by this specification.

If the Contractor elects to use MCG, the Contractor will submit a comprehensive written MCG work plan to the Engineer for review prior to scheduling the preconstruction meeting. The Department will review the plan to determine if the plan conforms to the requirements of the contract.

The Contractor will include in the MCG work plan how MCG will be incorporated into other technologies used on the project. The Contractor's MCG work plan will include, but is not limited to, the following:

1. A designation of which portions of the subgrade will be completed using MCG and which portions, if any, will be completed using conventional subgrade staking methods.
2. A description of the manufacturer, model, and software version of all MCG equipment.
3. Information on the qualifications of the Contractor's staff including, but not limited to, formal training and field experience.
4. A designation of a single person as the primary contact for MCG technology issues.
5. A description of site calibration procedures.
6. A description of site calibration and checking frequency and procedures for documenting site calibration and checking.
7. A description of the Contractor's quality control procedures including procedures for checking, mechanical calibration, and maintenance of equipment.
8. A description of the frequency and types of checks the Contractor will perform to ensure the constructed subgrade conforms to the contract requirements.

B. MATERIALS

The Contractor will furnish all staking materials of adequate quality for the purpose intended including all stakes, stake chasers, paint, field note books, and all other materials and equipment necessary to perform the required work.

C. CONSTRUCTION REQUIREMENTS

- 1. General:** The Department will set control points. The Contractor is responsible for the preservation of ties and references to all control points necessary for the accurate re-establishment of all base lines and centerlines shown in the plans, whether established by the Contractor or found on or adjacent to the project. The Department will also establish benchmark elevations. It is the responsibility of the Contractor to verify the accuracy of the benchmark elevations prior to use on the project.

The Engineer may check the accuracy and control of the Contractor's survey, staking work, and MCG at any time. The checks performed by the Engineer will not relieve the Contractor of the responsibility for the accuracy of the survey layout or the construction work. If the random checks show the grade is out of tolerance, the Engineer may require the Contractor to set additional stakes at the discretion of the Engineer, at no additional cost to the Department. If the Engineer orders additional stakes, the Contractor will perform the additional staking until the Contractor can show the staking operations achieve the specified grade tolerances.

Prior to any project staking, the Contractor will run a level circuit to check the plan benchmarks the full length of the project. At structure sites, the circuit will include two benchmarks, one on each end of the structure.

The Contractor will perform all staking and MCG work under the supervision of a qualified surveyor or engineer who is experienced and competent in road and bridge construction surveying, staking, and MCG procedures. The surveyor or engineer will be available to review work, resolve problems, and make decisions in a timely manner. A crew chief, competent to perform all required surveying duties, will supervise the staking in the absence of the surveyor or engineer from the project. The Contractor will submit the qualifications and work experience history of the surveyor or engineer who will supervise the construction survey and MCG work to the Engineer for review at least 14 calendar days prior to beginning the staking or MCG work.

- a. Conventional Construction Staking:** The Contractor will also submit the proposed starting date of the staking and the anticipated surveying work schedule.

The Contractor will furnish, set, and properly reference all stakes, references, lines, grades, and batter boards required. Minimum reference notations will be for type, location, and alignment (when there are multiple alignments in the same area). The Contractor will perform the survey and staking work in a manner consistent with standard engineering practices and approved by the Engineer.

The Contractor is solely responsible for the accuracy of the survey and staking work. The Contractor will notify the Engineer of any errors and discrepancies found in previous surveys, plans, specifications, or special provisions prior to proceeding with the survey work.

The Contractor will be responsible for the supervision of the construction staking personnel. The Contractor will correct any deficient survey or staking work that results in construction errors at no additional cost to the Department.

The Contractor will keep field notes in conventional handwritten notebooks or in a computerized form acceptable to the Engineer in a clear, orderly, and neat manner. The notebooks will become the property of the Department upon completion of the project. The notebooks will provide enough information such that quantity measurements are verifiable by the Department. Field notes are subject to inspection by the Engineer at any time.

The Contractor is required to submit any remaining required quantity calculations and notes to the Engineer no later than 60 calendar days after completion of the survey and staking work.

The Contractor will furnish stakes and wooden hubs or steel pins of sufficient length to provide a solid set in the ground. The Contractor will place half-length lath stakes or stake chasers or an alternate, acceptable to the Engineer, adjacent to or on the blue top hubs for guards. Stakes set not meeting these requirements will be reset at the Contractors expense. The Contractor will replace stakes damaged, destroyed, or made unusable at no additional expense to the Department.

- b. Machine Control Grading:** If the Contractor elects to use MCG, the Contractor will confirm the design surface DTM agrees with the contract plans, make adjustments to the design surface DTM as approved by the Engineer, and will maintain the design surface DTM for all areas of the project where MCG is used. The Contractor will also provide constructed surface DTM information to the Department in LandXML or other Engineer approved format.

The Contractor will notify the Department of any errors or discrepancies in Department provided information. The Department will determine what revisions may be required. The Department will revise the contract plans, if necessary, to address errors or discrepancies the Contractor identifies. The Department will provide the best available information related to those contract plan revisions.

The Contractor will revise the design surface DTM as required to support construction operations and to reflect any contract plan revisions the Department makes. The Contractor will perform checks to confirm the revised design surface DTM agrees with the contract plan revisions. The Contractor will provide a copy of the resultant revised design surface DTM to the Engineer in LandXML. The Department will pay for costs incurred to incorporate contract plan revisions as extra work.

The Contractor will designate a set of control points, including a total of at least 6 horizontal and vertical points or 2 per mile, whichever is greater, for site calibration for the portion of the project employing MCG. The Contractor will incorporate the Department provided control framework used for the original survey and design.

The Contractor will calibrate the site by determining the parameters governing the transformation of satellite information into the project coordinate system. The Contractor will use the control points provided by the Department for the initial site calibration. The Contractor will provide the resulting site calibration file to the Engineer before beginning subgrade construction.

In addition to the site calibration, the Contractor will perform site calibration checks at individual control points not used in the initial site calibration. At a minimum, the Contractor will check the calibration at the start of each day as described in the contractor's MCG work plan. The Contractor will report out-of-tolerance checks to the Engineer. The measured position must match the established position at each individual control point within the horizontal tolerance of ± 0.1 foot and the vertical tolerance of ± 0.05 foot.

The Contractor will construct the subgrade as the Contractor's MCG work plan indicates and in accordance with the contract requirements. The Contractor will update the plan as necessary during construction of the subgrade. The Contractor will perform periodic sensor calibrations, checks for blade wear, and other routine adjustments as required to ensure the final subgrade conforms to the contract requirements.

- 2. Construction Staking:** Construction staking will consist of all staking for centerline offset and stationing stakes in accordance with the following:

The Contractor will perform all survey work necessary to establish offset points to be used for re-establishment of centerline on the entire project prior to placement of asphalt surfacing. The Contractor will place a nail and lath on one side of the roadway at an offset from centerline so as to not interfere with construction work. Once established, this offset will remain constant throughout the project length. Place the nail and lath at even 200 foot intervals throughout the entire length of the project in tangent sections. Place the nail and lath at even 100 foot intervals throughout all horizontally curved sections. Clearly mark stationing with a permanent marker on each lath placed. The Contractor is solely responsible for the accuracy of this work.

The Contractor shall use a surveying instrument to set the offset nails at a true offset from actual centerline. A tolerance of 0.04' will be allowed on the offset nails. Original Construction plans showing locations of alignment points are available at the Pierre Area Office.

The Contractor is hereby advised that spiral curves may be present along some South Dakota Highway routes, and if found will need to be duplicated as well as normal simple curves when staking this offset line. Any deficient work which may result in staking errors shall be corrected by the Contractor at no additional expense to the Department. All costs associated with this work will be paid under the bid item construction staking.

3. **Slope Staking:** The Contractor will set slope stakes at the catch points. The slope stake reference hubs will be offset behind the slope stake. The Contractor will place slope stake reference hubs behind the slope stakes at a set distance, at the right-of-way line, or at the easement line, as approved by the Engineer.

The slope stakes will be set at 100-foot intervals on tangents and at 50-foot intervals in horizontal curves. The horizontal tolerance is ± 0.2 foot and the vertical tolerance is ± 0.1 foot. The Contractor will reference the subgrade shoulders with slope stake reference hubs set with a horizontal tolerance of ± 0.2 foot and a vertical tolerance of ± 0.05 foot.

The Contractor will retain the slope stakes and hub references until the final cross sections are completed and accepted by the Department.

The Department will provide slope stake notes.

4. **Grade Staking:** In accordance with the requirements of this provision, the Contractor may elect to use MCG equipment or may use conventional construction staking methods for all or part of the grade staking work, excluding paving hub staking.
 - a. **Conventional Blue Tops:** The Contractor will set grade finishing stakes (blue tops) for grade elevations and horizontal alignment on the roadway

centerline and at each shoulder at the top of the subgrade. Where additional lanes or turnouts are to be constructed, The Contractor will set blue tops at centerline, the normal shoulder distance, and the extended shoulder distance or outside the additional lane edge.

The transverse distance between blue tops will not exceed 20 feet. The Contractor will be required to set intermediate blue tops when the transverse distance is greater than 20 feet. When intermediate blue tops are required, The Contractor will set the intermediate blue tops at locations approved by the Engineer.

The blue top grade stakes will be set at 100-foot intervals on tangents and 50-foot intervals on horizontal curves. The horizontal tolerance for blue tops is ± 0.2 foot and the vertical tolerance is ± 0.02 foot.

The Department will provide grade staking (blue top) notes.

The Contractor will retain the shoulder blue tops and guards through placement of the granular material.

- b. Machine Control Grading:** The Contractor will set conventional construction staking grade finishing stakes (blue tops) for grade elevations and horizontal alignment on the roadway centerline and at each shoulder at the top of the subgrade (and gravel cushion for PCC paving projects) at a minimum of 1000 foot intervals on mainline or at least one location for sections less than 1000 foot long; at least two locations on side roads, side streets, and ramps; and at least one location within 100 feet of each bridge end. In addition, the Contractor will set blue tops for grade elevations and horizontal alignment on the roadway centerline and at each shoulder at the top of the subgrade (and gravel cushion for PCC paving projects) at critical transition points including, but not limited to, PC's, PT's, super elevations transition points, and other critical points required for the construction of drainage and roadway structures. The Contractor will also provide conventional construction staking grade finishing stakes (blue tops) at additional locations designated by the Engineer.

The Contractor will establish these grade staking (blue top) grades using the Department provided grade staking (blue top) notes, plan typical sections, and cross sections. The Contractor will use these stakes to check the accuracy of the MCG during construction. The Contractor will notify the Engineer at least 3 calendar days before making subgrade checks to allow the Engineer to observe the process.

The Contractor will ensure at least four of any five consecutive conventional construction staking grade finishing stakes (blue tops) locations are within the horizontal and vertical tolerances specified in Section 120.3. The

Contractor will notify the Engineer if more than one of any five consecutive conventional construction staking grade finishing stakes (blue tops) locations is not within the horizontal or vertical tolerance.

The Department may conduct periodic independent subgrade checks. The Department will notify the Contractor if any individual check is not within the horizontal or vertical tolerance.

- 5. Structure Staking:** The Contractor will stake and reference bridges and box culverts to ensure adequate horizontal and vertical control of the substructure and superstructure components. The Contractor will stake and reference the bridge chord or the bridge tangent and centerline of each pier, bent, and abutments for bridges. The Contractor will stake the box culvert centerline(s) in both longitudinal and transverse directions.

When the work requires bridge rehabilitation work, the structure staking will include all surveying and staking required for completion of the project. The staking work may include, but not be limited to, setting the rail for the deck overlay. The plans will indicate the grade line for the deck overlay; and if necessary, the Engineer may modify the grade line.

When staking retaining walls (except Type C), the Contractor will survey and record the original ground profile along the front face of the proposed wall at the elevation break points. The Contractor will supply the wall designer the original ground profile data prior to the wall designer performing the design. Set adequate stakes and references for horizontal and vertical control during construction.

For structures and retaining walls, the horizontal tolerance is ± 0.04 foot and vertical tolerance is ± 0.02 foot.

The Contractor is responsible for all notes required to stake structures including bridges, box culverts, and walls.

- 6. Miscellaneous Staking:** Miscellaneous staking includes the following work:
- a. Approach road staking and all tie-in checks. The Contractor will submit profiles and elevations of all approach roads and other tie-ins throughout the project to the Engineer at least 3 business days prior to staking;
 - b. Topsoil measurement and computation of quantities;
 - c. Special ditch staking;
 - d. Staking of signs, delineators, pavement markings, guardrail, curb & gutter, light poles, conduit, junction boxes, and related items (Staking is for all aspects, i.e. detours, temporary and permanent);
 - e. Right-of-way staking including easement lines and fence post panels;

- f. Pipe and storm sewer staking including drop inlets, manholes, cattle passes, and related items. If additional pipe, storm sewer, drop inlets, manholes, or cattle passes are required which are not shown on the plans, the staking will be paid in accordance with the bid item Engineer Directed Surveying/Staking;
- g. Mark limits of removal items (trees, foundations, curb & gutter, sidewalk, etc.);
- h. Detours, roadway diversions, and crossovers. (This work includes all design and staking notes required to design and stake the detour, roadway diversion, or crossover in accordance with the plan requirements. The Contractor will submit the completed design including profile and alignment and staking notes to the Engineer at least 3 business days prior to staking.);
- i. Final and original cross sections of Contractor and State furnished borrow pits and computations. The Contractor will perform earthwork computations by the average end area method;
- j. Resetting horizontal and vertical control, if disturbed;
- k. Approach slab and sleeper slab staking;
- l. Staking of sidewalks and curb ramps; and,
- m. Staking of steps and wheel chair ramps.

The Contractor will perform the pipe staking so the pipe will fit the field conditions. The plans show only approximate pipe locations and grades. The Contractor will not install pipe prior to gaining the Engineer's approval of minor location and grade adjustments necessary for proper staking of the pipe.

The Contractor will stake the slope catch points to determine the inlet and outlet locations, set reference stakes for the inlet and outlet locations, and stake ditches and special inlet and outlet grades to ensure proper drainage. The staking of manholes and drop inlets will be included in pipe and storm sewer staking. The Contractor will stake precast cattle passes similar to drainage pipes.

The horizontal tolerance for the pipe and storm sewer staking is ± 0.05 foot and the vertical tolerance is ± 0.03 foot.

The Contractor will keep pipe staking notes on a DOT Form 214.

- 7. Engineer Directed Surveying/Staking:** The use of the engineer directed surveying/staking contract item is intended for surveying/staking not included in the plan notes and this special provision. The Contractor may use a survey crew to perform additional survey/staking work caused or required by the Department. The Engineer will use a written order to authorize the hourly engineer directed surveying/staking item and describe the surveying/staking work required of the Contractor.

- 8. Final Cross Section Survey:** Final Cross Section Survey includes the following work:

Final earthwork (or terrain data) cross sections at the same intervals, stations, and plus stations as the slope stakes and computations of as-built quantities. The Contractor will include the blue top subgrade elevations, both shoulders and centerline, in the final earthwork (or terrain data). The Contractor will perform earthwork computations by the average end area method.

D. METHOD OF MEASUREMENT

Refer to the Table of Contractor Staking in the plans for more detail on how quantities were calculated.

- 1. Construction Staking:** The Department will not measure construction staking. The Department will pay the plan quantity as the final quantity unless the Engineer orders additional construction staking in writing.
- 2. Slope Staking:** The Department will not measure slope staking. The Department will pay the plan quantity as the final quantity unless the Engineer orders additional slope staking in writing.

The Department will consider all combinations of roadway widths as one set of slope stakes. On projects with ramps, the Department will consider ramps as roadway and include the ramps in the slope staking quantity. All additional slope staking for intersections will be incidental to the contract unit price for slope staking.

- 3. Grade Staking:** The Department will not measure grade staking. The Department will pay the plan quantity as the final quantity unless the Engineer orders additional grade staking in writing. The Department will make no adjustment to the plan quantity of grade staking regardless if the Contractor elects to use MCG on all or part of the project.

The Department will consider a two-lane roadway as one set of grade stakes. The Department will proportionately increase the plan quantity for multi-lane roadways in excess to two-lanes as shown in the table of construction staking (lane factor). For example, a three-lane roadway is equivalent to 1.5 times the quantity for a two-lane roadway. On projects requiring grade staking on ramps, the Department will consider ramps as a two-lane roadway for measurement as shown in the table of construction staking. The Department will not consider Acceleration/deceleration lanes and turning lanes for intersecting roads, and median crossovers as an additional roadway. All cost for additional grade staking for acceleration/deceleration lanes, turning lanes, intersecting roads, grade adjustments, and median crossovers will be incidental to the contract unit price for grade staking. All additional grade staking for intersections and

medians will be incidental to the roadway grade staking. Any additional staking the Contractor feels necessary to complete the grade staking work is the responsibility of the contractor and will be incidental to the contract unit price for grade staking.

4. **Structure Staking:** The Department will measure structure staking by the each for bridges, box culverts, and retaining walls.
5. **Miscellaneous Staking:** The Department will not measure miscellaneous staking. The Department will pay the plan quantity as the final quantity.
6. **Engineer Directed Surveying/Staking:** The Department will measure engineer directed surveying/staking to the nearest 0.1 hour with the following restrictions:

The use of engineer directed surveying/staking will be for the work ordered by the Engineer. The measured quantity will be the actual time the survey crew is working on the project, physically performing the field survey/staking work. The Department will not include travel time for the survey crew in the measurement.

The Engineer will issue a DOT 75 ticket for the hours authorized for engineer directed surveying/staking.

7. **Final Cross Section Survey:** The Department will measure final cross section survey to the nearest 0.001 mile for the plan earthwork balances requiring a final survey to determine as-built unclassified excavation quantities. The Engineer will determine which balances (if any) require a final survey during construction. The plan quantity will be the length of the project mainline. This item may be decreased if the Contractor and Engineer agree to accept the plan unclassified excavation quantity for any or all earthwork balances.

E. BASIS OF PAYMENT

Payment for all of the survey items will be considered full compensation for furnishing all necessary personnel, vehicles, surveying equipment, software, supplies, materials, recording fees, transportation, and incidentals to accurately and satisfactory complete the work.

The Department reserves the right to omit any of these bid items without providing compensation to the contractor if the Department deems the bid prices are unreasonable.

1. **Construction Staking:** The Department will pay construction staking at the contract unit price per mile.

2. **Slope Staking:** The Department will pay slope staking at the contract unit price per mile.
3. **Grade Staking:** The Department will pay grade staking at the contract unit price per mile.
4. **Structure Staking:** The Department will pay structure staking at the contract unit price per each.
5. **Miscellaneous Staking:** The Department will pay miscellaneous staking at the contract unit price per mile.

The Department will make partial payment as follows:

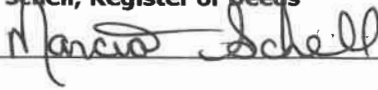
- a. Upon submission of the name, experience, and qualifications of the surveyor or engineer who will supervise the staking, the proposed starting date, and the staking schedule, the Department will pay the Contractor 25 percent of the plan quantity for the miscellaneous staking.
- b. The Department will make intermediate payments based on the amount of the staking work completed.
- c. The Department will make full payment at the plan quantity for miscellaneous staking upon completion of all surveying and staking and when the Contractor has furnished all field notebooks and records to the Engineer.

The Department will not adjust the contract unit price or plan quantity for miscellaneous staking due to overruns or under runs in the other contract items.

6. **Engineer Directed Surveying/Staking:** The Department will pay engineer directed surveying/staking on an hourly basis as per the Price Schedule for Miscellaneous Items. The value listed in the Price Schedule for Miscellaneous Items includes salaries, travel time, equipment, staking supplies, payroll additive, and all incidental expenses related to providing the survey crew.
7. **Final Cross Section Survey:** The Department will pay final cross section survey at the contract unit price per mile.

* * * * *

I Certify the within instrument was filed for record
067895 Book:68 MISC Page: 508 Filing 30.00
CORSON COUNTY, SD Transfer: 0.00
Recorded & Filed 2/19/2019 at 11:00 AM
Marcia Schell, Register of Deeds



By _____, Deputy

STATE OF SOUTH DAKOTA
AGREEMENT TO SELL MATERIALS

DOT-44B
(06/2010)

Eugene Geigle, hereinafter referred to as the "Owner" (whether one or more), for and in consideration of the mutual promises and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, grants a **NON-EXCLUSIVE** option to the **State of South Dakota**, acting by and through its **Department of Transportation**, hereinafter referred to as the "State," for the purpose of making the necessary tests for and purchasing borrow soil necessary for use in the construction, maintenance, and repair of highways. The Owner agrees to sell, transfer, and convey to the State such material located in and upon the following described real property situated in **Corson** County, South Dakota, more particularly described as follows, to wit:

The NE1/4 of Section 31 – Township 23 North – Range 23 East of the B.H.M., Corson County, South Dakota

This Agreement is intended to allow the removal of **Borrow Soil**.

The term of this Agreement shall be from **January 1, 2020**, to the completion of Project: **NH 0012(187)107, PCN 04FL**.

The Owner agrees that the State, and any and all servants, agents, contractors, or workers authorized by the State, shall have full and free right of ingress and egress from the public highway and shall have the right to operate all necessary equipment on the real property herein described for any purpose allowed or required by this Agreement. The term "necessary equipment" shall include equipment required to open the pit, produce materials, blend and mix with other materials, haul materials, service equipment, and restore the pit.

The State reserves the right to assign this Agreement to any party or parties performing the contracts for which the material will be required. Upon assignment of said Agreement, said party or parties shall have all rights herein granted to the State and shall assume all obligations of the State under this Agreement.

The State will pay to the Owner, from monies withheld from the Contractor, for material removed from said real property at the rate of:

\$0.25 (twenty-five cents) per cubic yard

The State will restore fencing disturbed by the State's operations under this Agreement to as good a condition as the fencing was in before work started. In the event a temporary fence is required around the pit to protect livestock, such fence will be erected at the expense of the State.

The State will operate the pit and will restore the affected area on completion of operations at the pit site in accordance with the General Provisions of "SOUTH DAKOTA DEPARTMENT of TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES" and the following:

1. The affected area will be restored for use as **Pastureland**.

2. Topsoil, to be stockpiled separately from the rest of the overburden, shall be considered to consist of the upper Six inches of natural soil.
3. At the completion of removal operations, the State will restore areas disturbed by the State's operations at the pit site with slopes created by material removal left at 4:1 or flatter.
4. Prior to the beginning of the borrow operations, the Owner or the Owner's representative, the State's Engineer, and the State's contractor shall meet and discuss the limits of work and pit operations.
5. The State will pay a one (1) time payment in the amount of \$100.00 per acre per year for two year(s) to cover loss of use of the real property.
6. The State will pay a one (1) time payment for crop damage at the rate of \$ N/A per acre.
7. Seeding Options: Circle one of A, B, or C (Not applicable) (**Circle One**)
 - ☒ A. The State will seed and mulch the disturbed area one (1) time only to permanent seed mixtures as shown in the plans; or
 - ☐ B. The Owner will, after the State replaces the topsoil, re-vegetate or cultivate the area at a time and in a manner consistent with the Owner's farming operations and land use plan. The State will pay a one (1) time payment in the amount of \$ _____ per acre to cover cost of such re-vegetation; or
 - ☐ C. Not applicable.
8. The Owner shall remain responsible for controlling all weeds.
9. Other conditions: (if none, enter "none")
none

This Agreement shall be binding on the State, the Owner, and the Owner's successors and assigns.

Owner(s): Eugene Heigle
Eugene Heigle
PO Box 194
McIntosh, SD 57641
(605) 273-4567
Date: 11-26-18

State of South Dakota
Department of Transportation
By: Joe F. Zeller
Its: Chief Materials and Surfacing Engineer
Date: 2-14-19

Owner(s): _____

Approved as to Form:
[Signature]
Special Assistant Attorney General

Date: _____

ACKNOWLEDGMENT FOLLOWS

OWNER'S ACKNOWLEDGMENT

State of South Dakota)
:SS
County of Corson)

On this the 26 day of November, before me, John M Koch,
a notary public, personally appeared Eugene Geisler, known to me or
satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged that he/she/they executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

John M Koch

Notary Public

(Notary Seal)

My Commission Expires: 8-6-23

STATE'S ACKNOWLEDGMENT

State of South Dakota)
:SS
County of Hughes)

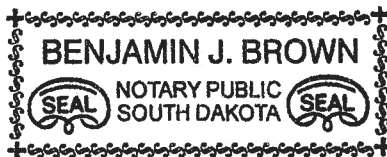
On this the 14th day of February, 2019, before me, Benjamin J Brown,
a notary public, personally appeared Joe J Feller, known to me or
satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged that he/she/they executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Benjamin J. Brown


Notary Public

(Notary Seal)



My Commission Expires: 1/7/2020

I Certify the within instrument was filed for record
067896 Book:68 MISC Page: 510 Filing 30.00
CORSON COUNTY, SD Transfer: 0.00
Recorded & Filed 2/19/2019 at 11:30 AM
Marcia Schell, Register of Deeds


By _____, Deputy

STATE OF SOUTH DAKOTA
AGREEMENT TO SELL MATERIALS

DOT-44B
(06/2010)

Harvey C. Vilhauer Trust and Beverly Vilhauer Trust, hereinafter referred to as the "Owner" (whether one or more), for and in consideration of the mutual promises and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, grants a **NON-EXCLUSIVE** option to the **State of South Dakota**, acting by and through its **Department of Transportation**, hereinafter referred to as the "State," for the purpose of making the necessary tests for and purchasing borrow soil necessary for use in the construction, maintenance, and repair of highways. The Owner agrees to sell, transfer, and convey to the State such material located in and upon the following described real property situated in **Corson County**, South Dakota, more particularly described as follows, to wit:

**The E1/2 NW1/4 of Section 31 – Township 23 North – Range 23 East of the B.H.M.,
Corson County, South Dakota**

This Agreement is intended to allow the removal of **Borrow Soil**.

The term of this Agreement shall be from **January 1, 2020**, to the completion of Project: **NH 0012(187)107,
PCN 04FL**.

The Owner agrees that the State, and any and all servants, agents, contractors, or workers authorized by the State, shall have full and free right of ingress and egress from the public highway and shall have the right to operate all necessary equipment on the real property herein described for any purpose allowed or required by this Agreement. The term "necessary equipment" shall include equipment required to open the pit, produce materials, blend and mix with other materials, haul materials, service equipment, and restore the pit.

The State reserves the right to assign this Agreement to any party or parties performing the contracts for which the material will be required. Upon assignment of said Agreement, said party or parties shall have all rights herein granted to the State and shall assume all obligations of the State under this Agreement.

The State will pay to the Owner, from monies withheld from the Contractor, for material removed from said real property at the rate of:

\$0.25 (twenty-five cents) per cubic yard

The State will restore fencing disturbed by the State's operations under this Agreement to as good a condition as the fencing was in before work started. In the event a temporary fence is required around the pit to protect livestock, such fence will be erected at the expense of the State.

The State will operate the pit and will restore the affected area on completion of operations at the pit site in accordance with the General Provisions of "SOUTH DAKOTA DEPARTMENT of TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES" and the following:

1. The affected area will be restored for use as **Pastureland and Farmland**.

2. Topsoil, to be stockpiled separately from the rest of the overburden, shall be considered to consist of the upper Six inches of natural soil.
3. At the completion of removal operations, the State will restore areas disturbed by the State's operations at the pit site with slopes created by material removal left at 4:1 or flatter.
4. Prior to the beginning of the borrow operations, the Owner or the Owner's representative, the State's Engineer, and the State's contractor shall meet and discuss the limits of work and pit operations.
5. The State will pay a one (1) time payment in the amount of \$100.00 per acre per year for two year(s) to cover loss of use of the real property.
6. The State will pay a one (1) time payment for crop damage at the rate of \$ 200.00 per acre.
7. Seeding Options: Circle one of A, B, or C (Not applicable) (**Circle One**)
 - A. The State will seed and mulch the disturbed area one (1) time only to permanent seed mixtures as shown in the plans; or
 - B. The Owner will, after the State replaces the topsoil, re-vegetate or cultivate the area at a time and in a manner consistent with the Owner's farming operations and land use plan. The State will pay a one (1) time payment in the amount of \$ _____ per acre to cover cost of such re-vegetation; or
 - ☒ C. Not applicable.
8. The Owner shall remain responsible for controlling all weeds.
9. Other conditions: (if none, enter "none")
none

This Agreement shall be binding on the State, the Owner, and the Owner's successors and assigns.

Owner(s):

Harvey C. Vilhauer
PO Box 766
Baker, MT 59313
(406) 891-2618

Date: 1-11-18

State of South Dakota
Department of Transportation

By: Joe J. Feller
Its: Chief Materials and Surfacing Engineer

Date: 2-14-19

Approved as to Form:

[Signature]
Special Assistant Attorney General

Owner(s):

Beverly Vilhauer
Beverly Vilhauer
PO Box 766
Baker, MT 59313
(406) 891-2618

Date: 1-11-19

ACKNOWLEDGMENT FOLLOWS

OWNER'S ACKNOWLEDGMENT

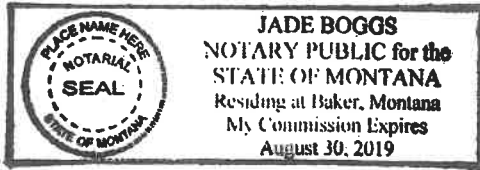
State of Montana)
County of Fallon) :SS

On this the 11 day of January, 2019, before me, Sade Boggs,
a notary public, personally appeared Harvey C Vilhauer, Beverly Vilhauer known to me or
satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged that he/she/they executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Sade Boggs
Notary Public

(Notary Seal)



My Commission Expires: August 30, 2019

STATE'S ACKNOWLEDGMENT

State of South Dakota)
County of Hughes) :SS

On this the 14th day of February, 2019, before me, Benjamin J Brown,
a notary public, personally appeared Joe J Feller known to me or
satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged that he/she/they executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

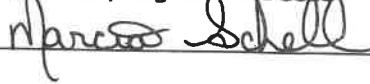
Benjamin J. B.
Notary Public

(Notary Seal)



My Commission Expires: 1/7/2020

I Certify the within instrument was filed for record
067893 Book:68 MISC Page: 504 Filing 30.00
CORSON COUNTY, SD Transfer: 0.00
Recorded & Filed 2/19/2019 at 10:00 AM
Marcia Schell, Register of Deeds



By _____, Deputy

**STATE OF SOUTH DAKOTA
AGREEMENT TO SELL MATERIALS**

DOT-448
(06/2010)

Gene Kling, hereinafter referred to as the "Owner" (whether one or more), for and in consideration of the mutual promises and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, grants a **NON-EXCLUSIVE** option to the **State of South Dakota**, acting by and through its **Department of Transportation**, hereinafter referred to as the "State," for the purpose of making the necessary tests for and purchasing borrow soil necessary for use in the construction, maintenance, and repair of highways. The Owner agrees to sell, transfer, and convey to the State such material located in and upon the following described real property situated in **Corson County, South Dakota**, more particularly described as follows, to wit:

The NW1/4 of Section 25 – Township 23 North – Range 18 East of the B.H.M., Corson County, South Dakota

This Agreement is intended to allow the removal of **Borrow Soil**.

The term of this Agreement shall be from **January 1, 2020**, to the completion of Project: **NH 0012(187)107, PCN 04FL**.

The Owner agrees that the State, and any and all servants, agents, contractors, or workers authorized by the State, shall have full and free right of ingress and egress from the public highway and shall have the right to operate all necessary equipment on the real property herein described for any purpose allowed or required by this Agreement. The term "necessary equipment" shall include equipment required to open the pit, produce materials, blend and mix with other materials, haul materials, service equipment, and restore the pit.

The State reserves the right to assign this Agreement to any party or parties performing the contracts for which the material will be required. Upon assignment of said Agreement, said party or parties shall have all rights herein granted to the State and shall assume all obligations of the State under this Agreement.

The State will pay to the Owner, from monies withheld from the Contractor, for material removed from said real property at the rate of:

\$0.25 (twenty-five cents) per cubic yard

The State will restore fencing disturbed by the State's operations under this Agreement to as good a condition as the fencing was in before work started. In the event a temporary fence is required around the pit to protect livestock, such fence will be erected at the expense of the State.

The State will operate the pit and will restore the affected area on completion of operations at the pit site in accordance with the General Provisions of "SOUTH DAKOTA DEPARTMENT of TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES" and the following:

1. The affected area will be restored for use as **Pastureland**.

2. Topsoil, to be stockpiled separately from the rest of the overburden, shall be considered to consist of the upper Six inches of natural soil.
3. At the completion of removal operations, the State will restore areas disturbed by the State's operations at the pit site with slopes created by material removal left at 3:1 or flatter.
4. Prior to the beginning of the borrow operations, the Owner or the Owner's representative, the State's Engineer, and the State's contractor shall meet and discuss the limits of work and pit operations.
5. The State will pay a one (1) time payment in the amount of \$100.00 per acre per year for two year(s) to cover loss of use of the real property.
6. The State will pay a one (1) time payment for crop damage at the rate of \$ N/A per acre.
7. Seeding Options: Circle one of A, B, or C (Not applicable) (**Circle One**)
 - A. The State will seed and mulch the disturbed area one (1) time only to permanent seed mixtures as shown in the plans; or
 - B. The Owner will, after the State replaces the topsoil, re-vegetate or cultivate the area at a time and in a manner consistent with the Owner's farming operations and land use plan. The State will pay a one (1) time payment in the amount of \$ _____ per acre to cover cost of such re-vegetation; or
 - C. Not applicable.
8. The Owner shall remain responsible for controlling all weeds.
9. Other conditions: (if none, enter "none")
none

This Agreement shall be binding on the State, the Owner, and the Owner's successors and assigns.

Owner(s):

Gene Kling
Gene Kling
21376 US Highway 12
Keldron, SD 57634
(605) 314-3021

Date: 11-26-18

State of South Dakota
Department of Transportation

By: Joe F. Feller
Its: Chief Materials and Surfacing Engineer

Date: 2-14-19

Approved as to Form:

Owner(s):

[Signature]
Special Assistant Attorney General

Date: _____

ACKNOWLEDGMENT FOLLOWS

OWNER'S ACKNOWLEDGMENT

State of South Dakota)
County of Corson) :SS

On this the 26 day of November, 2018, before me, John M Koch, a notary public, personally appeared Gene Kling, known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

John M Koch

Notary Public

(Notary Seal)

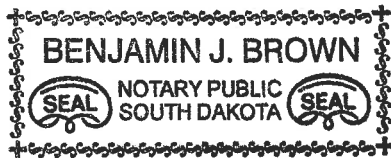
My Commission Expires: 8-6-23

STATE'S ACKNOWLEDGMENT

State of South Dakota)
County of Hughes) :SS

On this the 14th day of February, 2019, before me, Benjamin J Brown, a notary public, personally appeared Joe J Feller, known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



(Notary Seal)

Benjamin J. Brown

Notary Public

My Commission Expires: 1/7/2020

I Certify the within instrument was filed for record
067894 Book:68 MISC Page: 506 Filing 30.00
CORSON COUNTY, SD Transfer: 0.00
Recorded & Filed 2/19/2019 at 10:30 AM
Marcia Schell, Register of Deeds

By _____, Deputy

**STATE OF SOUTH DAKOTA
AGREEMENT TO SELL MATERIALS**

DOT-44B
(06/2010)

Gene Kling, hereinafter referred to as the "Owner" (whether one or more), for and in consideration of the mutual promises and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, grants a **NON-EXCLUSIVE** option to the **State of South Dakota**, acting by and through its **Department of Transportation**, hereinafter referred to as the "State," for the purpose of making the necessary tests for and purchasing borrow soil necessary for use in the construction, maintenance, and repair of highways. The Owner agrees to sell, transfer, and convey to the State such material located in and upon the following described real property situated in **Corson** County, South Dakota, more particularly described as follows, to wit:

The SE1/4 of Section 24 – Township 23 North – Range 18 East of the B.H.M., Corson County, South Dakota

This Agreement is intended to allow the removal of **Borrow Soil**.

The term of this Agreement shall be from **January 1, 2020**, to the completion of Project: **NH 0012(187)107, PCN 04FL**.

The Owner agrees that the State, and any and all servants, agents, contractors, or workers authorized by the State, shall have full and free right of ingress and egress from the public highway and shall have the right to operate all necessary equipment on the real property herein described for any purpose allowed or required by this Agreement. The term "necessary equipment" shall include equipment required to open the pit, produce materials, blend and mix with other materials, haul materials, service equipment, and restore the pit.

The State reserves the right to assign this Agreement to any party or parties performing the contracts for which the material will be required. Upon assignment of said Agreement, said party or parties shall have all rights herein granted to the State and shall assume all obligations of the State under this Agreement.

The State will pay to the Owner, from monies withheld from the Contractor, for material removed from said real property at the rate of:

\$0.25 (twenty-five cents) per cubic yard

The State will restore fencing disturbed by the State's operations under this Agreement to as good a condition as the fencing was in before work started. In the event a temporary fence is required around the pit to protect livestock, such fence will be erected at the expense of the State.

The State will operate the pit and will restore the affected area on completion of operations at the pit site in accordance with the General Provisions of "SOUTH DAKOTA DEPARTMENT of TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES" and the following:

1. The affected area will be restored for use as **Pastureland**.

2. Topsoil, to be stockpiled separately from the rest of the overburden, shall be considered to consist of the upper Six inches of natural soil.
3. At the completion of removal operations, the State will restore areas disturbed by the State's operations at the pit site with slopes created by material removal left at 3:1 or flatter.
4. Prior to the beginning of the borrow operations, the Owner or the Owner's representative, the State's Engineer, and the State's contractor shall meet and discuss the limits of work and pit operations.
5. The State will pay a one (1) time payment in the amount of \$100.00 per acre per year for two year(s) to cover loss of use of the real property.
6. The State will pay a one (1) time payment for crop damage at the rate of \$ N/A per acre.
7. Seeding Options: Circle one of A, B, or C (Not applicable) (**Circle One**)
 - ☒ A. The State will seed and mulch the disturbed area one (1) time only to permanent seed mixtures as shown in the plans; or
 - B. The Owner will, after the State replaces the topsoil, re-vegetate or cultivate the area at a time and in a manner consistent with the Owner's farming operations and land use plan. The State will pay a one (1) time payment in the amount of \$ _____ per acre to cover cost of such re-vegetation; or
 - C. Not applicable.
8. The Owner shall remain responsible for controlling all weeds.
9. Other conditions: (if none, enter "none")
none

This Agreement shall be binding on the State, the Owner, and the Owner's successors and assigns.

Owner(s):

Gene Kling
Gene Kling
21376 US Highway 12
Keldron, SD 57634
(605) 314-3021

Date: 11-26-18

State of South Dakota
Department of Transportation

By: Joc F. Feller

Its: Chief Materials and Surfacing Engineer

Date: 2-14-19

Approved as to Form:

Owner(s):

[Signature]
Special Assistant Attorney General

Date: _____

ACKNOWLEDGMENT FOLLOWS

OWNER'S ACKNOWLEDGMENT

State of South Dakota)
County of Corson) :SS

On this the 26 day of November, 2018, before me, John M Koch,
a notary public, personally appeared Gene Kling, known to me or
satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged that he/she/they executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

John M Koch

Notary Public

(Notary Seal)

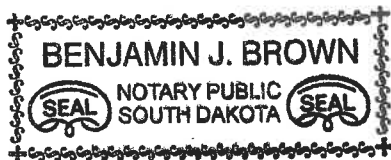
My Commission Expires: 8-6-23

STATE'S ACKNOWLEDGMENT

State of South Dakota)
County of Hughes) :SS

On this the 14th day of February, 2019, before me, Benjamin J Brown,
a notary public, personally appeared Joe J Feller, known to me or
satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged that he/she/they executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



(Notary Seal)

Benjamin J. Brown

Notary Public

My Commission Expires: 1/7/2020

THE FOLLOWING UTILITY COMPANIES ARE INVOLVED ON

PROJECT _____ NH 0012(187)106, Corson County, PCN 04FL _____

The contractor shall contact the following utilities in a sufficient amount of time prior to starting work. The companies will identify their facilities and it is the responsibility of the contractor and the company to coordinate their work to avoid damage to existing facilities and to allow for relocation of facilities as may be required for grading work:

The following utilities were determined to be involved and were formally notified on February 11, 2019, that if their facility is located within the existing public right-of-way, any adjustment of their facility would have to be accomplished at no cost to the State, **within 90 days from receipt of the notice, unless other arrangements are made with the Area Engineer.**

- (1) CenturyLink
15 4th Ave. SW
Aberdeen, SD 57401

CONTACT: CORY MOSER, TELE. #605-229-7441 or CELL 605-380-8438

The Company has an underground fiber in the south ROW from approximate station 1338+00 to the east intersection of SD Highway 65 and US Highway 12. The Company also has an underground copper in the north ditch along US Highway 12 from approximate station 1330+00 to the end of the project. The company plans on relocating the fiber to the section line along Railway Street into the town of McIntosh before the beginning of construction. After review of the plans, the company has determined that the copper will not be in conflict until the crossing at 329+00 & 1358+00. The company would like to protect these crossings in place during construction. As the Company's facilities are in existing public Right-of-Way, any relocation/adjustment necessary to accommodate the highway construction will be accomplished at no cost to the State and performed in coordination with the highway construction.

- (2) CRST Telephone Authority
PO Box 810
Eagle Butte, SD 57625-0810

CONTACT: BILL JANDREAU, TELE. #605-964-2600

The Company has a telecommunication line running along US Highway 12 in the north ROW from approximate station 1305+00L to approximate station 1357+25L. The line then heads south under US Highway 12 down along SD Highway 65. After review of the construction plans their fiber was identified as being in conflict from approximate station 1318+00L to approximate station 1330+00L. The company plans on having their fiber relocated before the start of construction. As the Company's facilities are in existing public Right-of-Way, any relocation/adjustment necessary to accommodate the highway construction will be accomplished at no cost to the State.

- (3) West River Telecommunications Cooperative
PO Box 39
Bison, SD 57620-0039

CONTACT: LYLE REIFF, TELE. #605-244-3142

The Company has underground telecommunication cables located on private easement along the north fence line from approximate station 21+00 to 83+00. After Company's review of the plans and talking with the Mobridge Area office, no adjustments or relocations should be necessary. The Company also has a fiber in the north ditch in public ROW from approximate station 1305+00 to approximate station 1367+00. The company has relocated that fiber to accommodate highway construction. relocation/adjustment necessary to accommodate the highway construction will be accomplished at no cost to the State and performed in coordination with the highway construction.

- (4) Moreau-Grand Electric
PO Box 8
Timber Lake, SD 57656-0008

CONTACT: KENT LARSON, TELE. #605-865-3511

The Company has an overhead power crossing US Highway 12 at approximate station 1358+50 along with adjacent poles. The Company plans on relocating these poles before the start of construction as to not be affected by the highway construction. An agreement between the State and the Company has been executed for this work.

- (5) Montana Dakota Utilities
400 N. 4TH St.
Bismarck, ND 58501-4022

CONTACT: JON WAHLGREN, TELE. #701-222-7794

The Company has overhead power poles on the south side of US Highway 12 from approximate station 34+00 to approximate station 58+00. The company will relocate 5 poles as to avoid any conflicts with the highway construction. An agreement between the State and the Company will be completed by the fall of 2020 for this work.

The requirements relating to Cooperation Between Contractors, as set forth in Section 5.7 of the Standards Specifications for Roads and Bridges, 2015 edition, shall prevail throughout the limits of this project.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
PORTLAND CEMENT**

DECEMBER 3, 2020

Section 750 – Page 519 – Delete and replace with the following:

750 PORTLAND CEMENT

Unless otherwise permitted by the Engineer, the product of only one mill of any one brand and type of Portland cement will be used on the project.

The specifications may reference a specific cement type for a construction application. When a cement type is specified, the cement type referenced is applicable to Section 750 A; however, the Contractor may use any of the following cements:

- A. Portland Cement:** Portland cement will conform to AASHTO M 85 for the type specified. All cements will not have more than 0.60% of Alkalies ($\text{Na}_2\text{O} + 0.658\text{K}_2\text{O}$).
- B. Portland Limestone Cement (PLC):** Portland limestone cement will conform to AASHTO M 240 Type IL. When Type II cement is specified, the cement will meet MS requirements of AASHTO M 240. When Type V cement is specified, the cement will meet HS requirements of AASHTO M 240. The Contractor will submit ASTM C1012 test results from within the last 12 months to the Engineer prior to using Portland limestone cement.
- C. Portland-Pozzolan Cement:** Portland-pozzolan cement will conform to AASHTO M 240 Type IP. When Type II cement is specified, the cement will meet MS requirements of AASHTO M 240. When Type V cement is specified, the cement will meet HS requirements of AASHTO M 240. The Contractor will submit ASTM C1012 test results from within the last 12 months to the Engineer prior to using Portland-Pozzolan cement.

Fly ash used in the cement manufacturing will meet the requirements of Section 753. The fly ash content will meet the fly ash percent specified. Fly ash may not be substituted for a portion of the Portland-pozzolan cement during concrete production. If a different pozzolan is used in the cement manufacturing, the Portland-pozzolan cement will meet equivalent

performance of historical fly ash percent specified mixes, as determined and reviewed by the Department's Concrete Engineer.

- D. Ternary Blended Cement:** Ternary blended cement will conform to AASHTO M 240 Type IT. When Type II cement is specified, the cement will meet MS requirements of AASHTO M 240. When Type V cement is specified, the cement will meet HS requirements of AASHTO M 240. The Contractor will submit ASTM C1012 test results from within the last 12 months to the Engineer prior to using ternary blended cement.

The ternary blended cement will meet the equivalent performance of historical fly ash percent specified mixes, as determined and reviewed by the Department's Concrete Engineer.

Fly ash may not be substituted for a portion of the ternary blended cement during concrete production.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
PREQUALIFICATION OF BIDDERS**

OCTOBER 16, 2020

Delete Section 2.1 and replace with the following:

2.1 PREQUALIFICATION OF BIDDERS - Prequalification on state highway construction contracts is required unless the amount being bid is less than \$250,000.

A prospective bidder must be prequalified prior to the time and date specified for bid opening. A prospective bidder may apply for prequalification by completing and executing a Contractor's prequalification statement on a form approved by the Department. This application must be received by the Department's classification and rating committee at least 14 calendar days before the opening of the prospective bidder's bid, unless a shorter time frame is approved by the committee.

Once prequalified, the Department will issue a notice to the prospective bidder stating the prospective bidder's approved work classification or work classifications, the prospective bidder's overall bidding capacity, the prospective bidder's per contract bidding capacity, and the prospective bidder's expiration date for prequalification status.

The complete prequalification requirements are contained in South Dakota Administrative Rule 70:07.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
RESTRICTION OF BOYCOTT OF ISRAEL**

JANUARY 31, 2020

In accordance with the State of South Dakota Office of the Governor Executive Order 2020-01 the following will apply to all contracts unless the amount being bid is less than \$100,000:

By submitting a bid proposal for this contract, the bidder certifies and agrees the following information is correct for the bidder and all subcontractors (all tiers) and suppliers with five (5) or more employees:

The bidder, in preparing the bid proposal or in considering proposals submitted from qualified potential suppliers and subcontractors, or in the solicitation, selection, or commercial treatment of any supplier or subcontractor; has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid proposal, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the Department to reject the bid proposal submitted by the bidder on this contract and terminate any contract awarded based on the bid. The bidder agrees to provide immediate written notice to the Department if, during the term of the contract awarded to the bidder, the bidder no longer complies with this certification. The bidder further agrees such noncompliance may be grounds for contract termination.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
SOUTH DAKOTA ELECTRONIC BID SYSTEM**

JULY 23, 2018

MAKE THE FOLLOWING CHANGES TO THE INDICATED SECTIONS:

Section 2.2 – Page 13 – Delete and replace with the following:

2.2 ELECTRONIC IDENTIFICATION - For contracts let using the South Dakota Electronic Bid System (SDEBS), a prospective bidder must obtain a company identification and password from the Department's website. Each company will receive one company identification and password. With a company identification and password, a prospective bidder will be able to access electronic files and the plan holders list.

In addition to a company identification and password, the prospective bidder must obtain a bidder identification and password for each individual authorized to prepare and submit a bid proposal on behalf of the company. To obtain a bidder identification and password, a prospective bidder must complete a bidding administrator authorization form (available on the Department's website), furnishing all required information and all appropriate signatures, and submit the form to the Department allowing 2 business days for the Department to set-up bidding administrator(s) and issue bidder identification(s) and password(s).

A bidding administrator will have privileges in the SDEBS to prepare bids, submit bids, and authorize additional company employees to prepare and submit bids. Additionally, a bidding administrator will be responsible for maintaining the list of authorized bidders for the company and will have the ability to add employees, remove employees, and set-up bidder identifications and passwords within the SDEBS. Bidding Administrator authorization will remain in full force and effect until written notice of termination of this authorization is sent by an Officer of the company and receive by the Department.

A bidder identification and password, coupled with a company identification previously assigned by the Department, will serve as authentication that an individual is a valid bidder for the company.

Section 2.3 – Page 13 – Delete the 1st sentence of the 2nd paragraph and replace with the following:

For contracts let using the SDEBS Letting process, the Department will not place restrictions on who may download the bidding package, except the ability to prepare and submit a bid proposal will require a bidder identification and password as described in Section 2.2.

Section 2.7 B. – Page 17 – Delete the 1st paragraph and replace with the following:

A bidder must prepare and submit a bid proposal using the SDEBS.

Section 3.2 A. – Page 22 – Delete and replace with the following:

A. The bid proposal is incomplete, or is not submitted through the Department's SDEBS or the form furnished by the Department, the form is altered, or part thereof is detached or incomplete;

Section 3.2 G. – Page 23 – Add “or,” to the end of this section.

Section 3.2 H. – Page 23 – Delete and replace with the following:

H. For SDEBS lettings, confirmation of receipt and incorporation of all addenda is not included in the bid proposal.

Section 3.2 I. – Page 23 – Delete this section

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CONTRACTOR ADMINISTERED PRECONSTRUCTION MEETING

DECEMBER 18, 2019**

I. DESCRIPTION

This work consists of the Contractor scheduling and conducting a preconstruction meeting prior to beginning work on this contract. Additionally, this work consists of the Contractor providing the Area Engineer a completed list of required submittals.

II. MATERIALS (Not Specified)

III. CONSTRUCTION REQUIREMENTS

The Area Engineer will provide the Contractor the Authorization Form for Preconstruction Meeting (Form DOT-270) and the Contractor's Required Submittals Form (Form DOT-272) after the date of the Notice of Award and no later than 10 business days after the date of the Notice to Proceed.

The Contractor's authorized representative as indicated on the Signature Authorization Form (Form DOT-209) will complete, in its entirety, the first page of the Authorization Form for Preconstruction Meeting and will initial each proceeding section. By initialing each section, the Contractor is confirming comprehension of each section.

The Contractor's Required Submittals Form is a document outlining information required prior to the completion of the project. This list will include two types of submittals; 1) information required before scheduling a preconstruction meeting and 2) information required before the Contractor begins related work. The Department reserves the right to request additional information not included in the original list of required submittals. The list of required submittals will include, but is not limited to, proposed sequence changes, shop drawings, permits, certifications, mix designs, labor compliance, equal employment opportunity, and disadvantaged business enterprise documents. The Area Engineer will update the Contractor's Required Submittals Form with any project specific requirements and cross out or delete those that do not apply prior to providing the document to the Contractor.

Prior to scheduling the preconstruction meeting, the Contractor will complete and provide the Area Engineer all items on the list of required submittals that are

required as described in 1) above. If the Contractor cannot complete and provide a submittal item required prior to scheduling the preconstruction meeting, the Contractor will contact the Area Engineer to establish a mutually agreed upon date when the required submittal will be completed and provided to the Area office.

The Contractor will not begin work on an item until the Contractor has provided the Area Engineer with all required information for the applicable work item and the appropriate office has approved the information, if necessary. The Contractor will make every reasonable effort to deliver the required submittals at the earliest possible time.

When the Contractor has provided the Area Engineer all required submittals, except those mutually agreed upon to be provided at a later date or dates, the Contractor will schedule a preconstruction meeting with the Area Engineer.

Within 2 business days following the Contractor scheduling the preconstruction meeting, the Area Engineer will prepare and send the Contractor a meeting confirmation and the Preconstruction Meeting Outline (Form DOT-271).

The Area Engineer will edit and amend the Preconstruction Meeting Outline, as necessary, to meet the specific needs of the project. The Area Engineer will complete the project information and the Department information prior to furnishing the form to the Contractor.

The Contractor will complete the Contractor's portion of the Preconstruction Meeting Outline and will add additional discussion items as needed. The Contractor will send the meeting notice and final Preconstruction Meeting Outline to the Area Engineer, all subcontractors, utility companies, railroad companies (if applicable), and all suppliers at least 5 business days prior to the preconstruction meeting.

The Area Engineer will send the notice of the meeting and the final Preconstruction Meeting Outline of discussion items to any other government entities and other principle stakeholders involved in the project at least 3 business days prior to the preconstruction meeting.

At the discretion of the Area Engineer, the preconstruction meeting may be held in person, videoconference, or over the phone. The Contractor's competent superintendent who will be working on this project, as required by Section 5.5, or the Contractors Project Manager, as required by the Special Provision for Cooperation by Contractor and Department (if applicable), , is required to attend the preconstruction meeting.

The Contractor will lead the meeting discussion as described in the Preconstruction Meeting Outline. The Area Engineer will prepare the meeting minutes including any unresolved items and distribute the minutes to all attendees

and principle stakeholders within 5 business days following the preconstruction meeting.

IV. METHOD OF MEASUREMENT

The Department will not make a separate measurement for the preconstruction meeting.

V. BASIS OF PAYMENT

The Department will not make a separate payment for the preconstruction meeting. All costs associated with the preconstruction meeting will be incidental to other contract items.

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FUEL ADJUSTMENT AFFIDAVIT

Project Number _____
PCN _____
County _____

For project let using the SDEBS) and in accordance with Section 9.12, the bidder is not required to notify the Department at the time of submitting bids whether the Contractor will or will not participate in the fuel cost adjustment program. Prior to execution of the contract, the successful bidder must submit this completed form to the Department for approval. The Fuel Adjustment Affidavit shall include the anticipated fuel cost of subcontractors.

Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price? No adjustments in fuel prices will be made if "No" is checked.

☐ Yes

☐ No

If yes, provide the total dollars for each of the applicable fuels. No adjustments in fuel price will be made for the fuel types that are left blank or completed with a \$0.00 value.

Diesel (x) \$ _____

Unleaded (y) \$ _____

Burner Fuel (z) \$ _____ Type of Burner Fuel Used: _____

Sum (x + y + z) = \$ _____

Note: The sum of the x, y, and z may not exceed 15% of the original contract amount.

The following must be completed regardless of whether the Contractor elects to participate in the fuel adjustment affidavit

Under the penalty of law for perjury or falsification, the undersigned, _____,
(Printed Name)

_____ of _____,
(Title) (Contractor)

hereby certifies that the documentation is submitted in good faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the monetary amount identified accurately reflects the cost for fuel, and that they are duly authorized to certify the above documentation on behalf of the company.

I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets, and other data pertinent to the justification of the fuel costs shown above.

Dated _____ Signature _____

Notarization is required only when the Contractor elects to participate in the fuel adjustment affidavit

Subscribed and sworn before me this _____ day of _____, 20____.

Notary Public

My Commission Expires

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES
APPENDIX A & E**

MARCH 1, 2016

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or

is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
DISADVANTAGED BUSINESS ENTERPRISE**

AUGUST 14, 2018

The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate.

I. Definitions

- A. Specified Goal:** A DBE participation goal for a contract as indicated by a specific numerical percentage of the total dollar amount of the contract in the bidding documents.
- B. Not Specified:** No specific DBE participation goal is specified for a contract.
- C. Disadvantaged Business Enterprise (DBE):** A for-profit small business that is certified by the Department and is listed in the DBE Directory available on the Department's web site.
- D. Good Faith Effort (GFE):** Efforts to achieve a DBE goal which; by their scope, intensity, and appropriateness to the objective; can reasonably be expected to meet the objective of the Department's DBE program pursuant to 49 CFR 26.1.
- E. Positive Contact:** Communication between the bidder and the DBE in which the bidder receives an oral or written response from the DBE stating the DBE's intention to quote or not quote a project.
- F. Commitment:** The dollar amount of work to be subcontracted to DBEs, according to the bidder's bid. The commitment may be compared to the dollar amount of all contract items in the bidder's bid and expressed as a percentage of the total bid amount.

II. Bidding Requirements

A bidder must not discriminate on the basis of race, color, national origin, or sex in the solicitation or award to subcontractors and material suppliers. Bidders who demonstrate a pattern of possible discrimination through consistent and repeated under-utilization of DBEs may be subject to investigation and sanctions allowed by regulation, administrative rule, or law.

The Bidder's failure to carry out the requirements of this special provision will be treated as a non-responsive bid.

On contracts that specify a specific DBE contract participation goal, all bidders must include their DBE commitment for the contract in the bidding files provided by the Department.

If the contract indicates "Not Specified," all bidders are encouraged to include their anticipated DBE utilization for the contract in the bidding files provided by the Department.

Each bidder must submit a list of all subcontractors and suppliers (DBEs and non-DBEs) the bidder received quotes from for that contract with the bid files.

A Contractor must make reasonable efforts to provide opportunities for DBEs to participate on Federal-aid contracts throughout the life of the contract.

On contracts let with a specified DBE contract participation goal, where the low bidder has not met or exceeded that goal, upon request from the Department all bidders who did not meet or exceed the goal must provide GFE documentation as indicated in Section III of this special provision.

When the DBE participation is "Not Specified" on a contract, each bidder is encouraged to use DBE Contractors; however no bidder will be required to furnish GFE documentation.

Bidders must submit GFE documentation, when requested by the Department, within 2 business days from the date bidders are contacted by the Department. Section III of this special provision provides information on the types of action bidders should make as part of their GFE to obtain DBE participation. Bidders may submit documentation with the bidding files provided all pertinent information is included. Bidders must submit any missing documentation within 2 business days from the date the Department contacts the bidder. If the bidder fails to comply with this requirement, the Department will consider the bid proposal irregular and may reject the bid proposal.

If the apparent low bidder does not provide documentation showing GFE as required by this special provision, the Department will consider that bid

nonresponsive and may either award the contract to the next lowest responsible bidder with a responsive bid, or reject all bids. Subsequent to the DBE committee's decision that the apparent low bidder's efforts do not establish GFE, the apparent low bidder will be notified that the bid is not responsive. The apparent low bidder will have 2 business days from the date of notification to contact the Bid Letting Engineer to arrange a meeting with the Department Secretary, or the Secretary's designee, to present documentation and argument about why the bid should not be rejected. The Department Secretary or the Secretary's designee will issue a written decision on responsiveness of the bid within 2 business days after the meeting.

If the apparent low bid is rejected for failure to meet the GFE or other requirements, the next apparent low bidder's GFE will be reviewed, unless all bids are rejected. Unless all bids are rejected, award of the contract will be made to the lowest bidder with a responsive bid.

The lowest responsive bidder will be required to complete form DOT-289B, as included in the contract documents, when the contract is sent for signature. This form requires a signature from each DBE identified in the low bidder's DBE commitment. A separate form will be supplied for each DBE and will be included in the contract documents.

Bidders are encouraged to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or other related services.

III. Good Faith Efforts

If a GFE package is requested on a contract with a specified goal, the bidders must submit documentation showing compliance with the following requirements:

- A.** The bidders will submit a contact log of all solicitation efforts including:
- Name of the DBE firm
 - Name and phone number of the individual with whom contact was made
 - Date, time, and manner of each and every contact (by phone, in person, fax, mail, e-mail, etc.)
 - The DBE's response to the solicitation
 - Result of the solicitation effort

An example of a solicitation log is available on the Department's Bid Letting website. When bidding utilizing the South Dakota Department of Transportation Electronic Bid System (SDEBS), SDEBS may be used to document the log of solicitation efforts for the project.

- B.** The bidders will also submit documentation that shows GFE in relation to the following requirements:
1. The bidder must select contract work items to encourage DBE participation. This includes breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
 2. The bidder must solicit all certified DBEs that are listed in the appropriate work classifications in the DBE directory and that have indicated in the directory they are willing to work in the project's geographic area. Without exception, all DBEs who are listed on the plan holders list by 10 AM central time 7 calendar days prior to the bid letting must be solicited in accordance with Section III.B.3 of this special provision. If the bidder has not solicited any DBE meeting these requirements, the bidder will provide a detailed written explanation showing why the DBE was not solicited.
 3. To provide adequate time for the DBE to respond with a quote in the normal course of business, the bidder must make the initial solicitation at least 6 calendar days by mail or 5 calendar days by phone, fax, or e-mail prior to the letting date. Without exception, all DBEs who are listed on the plan holders list by 10 AM central time 7 calendar days prior to the bid letting must be solicited.
 4. If the bidder does not receive a positive contact from a DBE, the bidder must follow up the initial solicitation with a second solicitation by phone, fax, or e-mail to determine whether the DBE is interested in quoting. The bidder must make this second solicitation at least 2 business days prior to the letting.
 5. The bidder will provide interested DBEs with adequate and timely information about plans, specifications, and requirements of the contract to assist DBEs in responding to a solicitation.
 6. If a bidder rejects a DBE quote because of previous problems with a particular DBE, the bidder must prepare a detailed written explanation of the problem. Additional cost involved in finding and using DBEs is not, in itself, sufficient reason for a bidder to reject a quote. A bidder must not reject a DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities.
 7. Any additional information requested by the Department.
- C.** The bidder must consider qualified DBEs whose quotes are reasonably competitive. If the bidder rejects any quote because it is considered not to be

“reasonably competitive,” the bidder must provide copies of all DBE and non-DBE quotes, and a work item price spreadsheet comparing DBE quotes to non-DBE quotes. The spreadsheet must show which quote was included in the bid for the work items being compared. The ability or desire of a bidder to perform the work with its own forces does not relieve the bidder of the responsibility to make GFE. In the event a bidder elects to use its own forces over a DBE, the bidder must include, on the spreadsheet, documentation of the costs of using the bidder’s own forces. This can be shown in a number of ways, which may include submitting portions of the bidder’s work sheets used to prepare the bid.

- D. The bidder must explain why the specified goal could not be met.
- E. The bidder must identify any additional efforts the bidder made to secure DBE participation.

IV. Counting DBE Participation

On projects with a specified goal, the contract commitment, as submitted with the bid, will be documented on form DOT-289R/C as included in the contract documents.

If the project is shown as “Not Specified,” the anticipated DBE utilization, as submitted with the bid, will be documented on form DOT-289 R/N – DBE Utilization Form, as included in the contract documents. The DBE utilization shown on this form is not a commitment to use the DBE. This information will be used by the Department to track anticipated DBE usage.

Only the portion of a contract performed by the DBE’s own forces will count toward DBE participation. Included is the cost of supplies and materials obtained by the DBE for the contract, including supplies purchased or equipment leased by the DBE. Supplies and equipment the DBE subcontractor purchased or leased from the Contractor or its affiliate is not allowed to be included.

When a DBE performs as a participant in an approved joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will count toward DBE participation.

A bidder may count toward its DBE participation only that percentage of expenditures to DBEs that perform a commercially useful function (CUF) in the performance of a contract. A DBE performs a CUF when the DBE is responsible for execution of the work of a contract and is carrying out the DBE’s responsibilities by actually performing, managing and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating prices, determining

quality and quantity, ordering and installing (where applicable) the materials, and paying for the material itself. To determine whether a DBE is performing a CUF, the Department will evaluate the amount of work subcontracted, the industry practice, and whether the amount the DBE is to be paid is commensurate with the work it is actually performing, DBE credit claimed for performance of the work, and other relevant factors.

A DBE is not performing a CUF if the DBE performs less than 30% of the total cost of its contract with its own work force, or if its role is limited to that of an extra participant in a transaction, project, or contract through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is simply an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

DBE participation will be counted for trucking services as follows:

The bidder/Contractor will receive credit toward DBE participation for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates and which are driven by drivers the DBE employs.

A DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. When a DBE leases trucks from another DBE, the bidder/Contractor can count the total value of the transportation services the lessee DBE provides on the contract toward DBE participation.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. When a DBE leases trucks from a non-DBE, the bidder/Contractor can count toward DBE participation only the fee or commission the DBE receives as a result of the lease arrangement. The bidder/Contractor does not receive credit toward DBE participation for the total value of the transportation services, since all services are not provided by a DBE.

The bidder may count toward DBE participation expenditures to DBE firms for materials, supplies, or services as follows:

If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE participation. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE participation. A regular dealer is a firm that owns, operates, or maintains a store, warehouse

or other establishment in which the materials, supplies, articles, or equipment are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, count only the amount of fee or commission charged for assistance in the procurement of the materials or supplies or fee or transportation charges for the delivery of materials or supplies required at the job site toward DBE participation. In order to be counted, the Department must determine the fee to be reasonable and not excessive as compared to fees customarily allowed for similar services. The cost of the materials and supplies themselves will not count toward DBE goals.

The Department will not count toward DBE participation materials or services provided by a DBE who is not currently certified prior to and including the date of the Notice of Award. Additionally, the Department will not count toward DBE participation materials or services provided by a DBE who loses certification at any time after the date of the Notice of Award except in the case of a DBE whose ineligibility is caused solely by having exceeded the size standard.

No intended or actual subcontracting arrangement which is contrived to artificially inflate DBE participation is allowed. This includes, but is not limited to, DBE middlemen which serve no commercially useful function, or arrangements where a DBE is acting essentially as a broker of goods or services, but has been counted as a manufacturer, regular dealer, or subcontractor.

The Department will review and monitor projects for compliance with the bidder's intended DBE participation. Failure by the Contractor to fulfill the contract commitment constitutes a breach of contract. The Department may also investigate the form and substance of particular business arrangements between and among DBE and Contractors with regard to specific contracts. If, as a result of an investigation, the Department determines a particular business arrangement is not allowable, the dollar amount of the unallowable DBE participation will be subtracted from the Contractor's DBE participation on that project. The Contractor will be notified if the apparent DBE participation is not adequate to meet the DBE participation stated on the form DOT-289R/C. The Contractor will be directed to seek additional participation from other DBEs to meet the unallowable portion on that contract.

All Contractors and DBEs shall cooperate fully and promptly with the Department in compliance reviews, investigations, and other requests for information. If the Department determines a Contractor was a knowing and willing participant in an unallowable business arrangement, or in the event of repeated violations,

falsification, or misrepresentation, the Department will impose sanctions. Sanctions may include, but are not limited to one or more of the following:

- Assessment of liquidated damages as stated in Section VII of this special provision
- Suspension of bidding privileges or debarment
- Withholding progress payments
- Securing additional DBE participation on future Federal-aid contracts sufficient to make up for the DBE participation found to be unallowable
- Referral of the matter for criminal prosecution

V. Joint Checks to DBEs

A joint check is a check issued by a prime Contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project. For a prime Contractor to receive DBE credit, the DBE must perform a commercially useful function and be responsible for negotiating price, determining quality and quantity, ordering materials and installing (where applicable) and paying for materials.

To ensure that the DBE is independent of the prime Contractor and in compliance with the regulation, use of joint checks will be reviewed and allowed only under following conditions:

- Issued for valid reasons only, not simply for the convenience of the prime Contractor
- Used for a specific contract or specific time frame and not long-term or open ended
- Payment is made to the DBE and not directly to the supplier
- Requested and received prior written approval from the DBE Compliance Officer.

The request must include the following:

- Name of the DBE
- The DOT contract number(s)
- The DOT PCN number(s)
- The work the DBE will be performing on each contract
- Name of the supplier(s) used by the DBE
- The specific reason(s) for issuing joint checks

The Department will review the request and verify the circumstances indicated in the request with the DBE. A copy of the request and approval will be provided to the prime Contractor and the DBE.

VI. Certification of DBE Performance and Payments

Within 30 calendar days of the date of the Acceptance of Field Work the Contractor is required to submit form DOT-289 (Certification of DBE Performance and Payments), listing all DBEs that participated in the contract, and the total dollar amount paid (and anticipated to be paid) to each. DBE attainments are compared to commitments on form DOT-289R/C and any payments less than 90% of that commitment, without proper justification and documentation, will have liquidated damages assessed against the contract. The Contractor's final payment is not released until receipt of the form DOT-289.

Contractors are required to maintain a running tally of payments to DBEs. For reports of payments not being made in accordance with the prompt payment provision, alleged discrimination against a DBE or other similar complaint, the tally may be requested for review by the Department. The Department may perform audits of contract payments to DBEs to ensure that the amounts paid were as reported on the form DOT-289. All Contractors participating in Federal-aid contracts are expected cooperate fully and promptly with the Department in compliance reviews, investigations and other requests for information regarding payments to DBEs. Their failure to do so is grounds for appropriate sanctions or action against the Contractor.

The Department will monitor the running tally on a program basis and if reporting issues are identified, additional reporting requirements may be implemented.

The Contractor is required to report payments to DBEs twice a year from the date of the Notice to Proceed until the date of the Acceptance of Field Work. Reporting periods and deadlines for payment reporting submittals will be in accordance with the following:

Reporting Period:

October 1 to March 31
April 1 to September 30

Reporting Deadline:

April 30
October 31

For each reporting period, the Contractor is required to submit form DOT-289 listing all DBEs that participated in the contract, the payments to DBEs for that reporting period, and the total dollar amount paid to each DBE. For each reporting period after the Notice to Proceed, the Contractor will mark the form DOT-289 as "On-Going" when reporting payments to DBEs prior to the Date of the Acceptance of Field Work. Within 30 calendar days of the date of the Acceptance of Field Work and all DBE payments have been made, the Contractor is required to submit form DOT-289 and the Contractor will mark the form DOT-289 as "Final".

Each form DOT-289 must be provided to the Engineer by the reporting deadline stated above.

DBE payment are compared to commitment on form DOT-289R/C and any payment less than 90% of that commitment, without proper justification and documentation, will result in the Department assessing liquidated damages against the contract. The Contractor's final payment will not be released until receipt of the form DOT-289 marked "Final".

VII. Liquidated Damages

A. If the Contractor does not meet its contract commitment documented on form DOT-289 R/C, the Department will assess liquidated damages according to the following schedule:

1. For the first \$1,000 DBE deficiency, 100% of the deficiency.
2. For the next \$9,000 DBE deficiency, 50% of the deficiency.
3. For the next \$10,000 DBE deficiency, 25% of the deficiency.
4. For any remaining DBE deficiency in excess of \$20,000, 10% of the deficiency.

This liquidated damage provision will not be applicable where actual payment to a DBE is within 90% of the commitment or where there are good and sufficient reasons, properly documented, for the deficiency such as quantity under-runs, project changes, or other unexpected occurrences.

B. If a Contractor finds it impossible, for reasons beyond its control, to meet the contract commitment on form DOT-289R/C, the Contractor may, at any time prior to completion of the project, provide a written request to the DBE Compliance Officer for a complete or partial waiver of liquidated damages. No request for a waiver will be accepted after Acceptance of Field Work has been issued.

VIII. Termination or Substitution of a DBE

The Contractor will not be allowed to terminate or substitute a DBE without the Department's prior verbal consent followed by written approval. This includes, but is not limited to, instances in where the Contractor desires to perform work originally committed to a DBE with its own forces, with an affiliated company, with a non-DBE, or with another DBE. Department approval is required when the contract contains a "specified goal" on form DOT-289R/C and the DBE to be terminated or substituted is listed as a commitment on the form DOT-289R/C.

The Department will provide written consent only if the Department agrees the Contractor has good cause to terminate the DBE listed on the form DOT-289R/C. Good cause includes the following:

- The DBE fails or refuses to execute a written contract
- The DBE fails or refuses to perform the work of the DBE subcontract in a manner consistent with normal industry standards or Department specifications unless the failure or refusal by the DBE is a result of unfair or discriminatory actions by the Contractor
- The DBE fails or refuses to meet the Contractor's reasonable nondiscriminatory bond requirements
- The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
- The DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1,200 or applicable state law
- The Department has determined that the DBE is not a responsible Contractor
- The DBE voluntarily withdraws from the project and provided the Department with a written notice of withdrawal
- The DBE is found to be ineligible to receive DBE credit for the type of work required
- A DBE owner dies or becomes disabled with the result that the DBE is unable to complete its work on the contract
- Other documented good cause that the Department determines to substantiate the termination of the DBE.

Good cause does not exist if the Contractor seeks to terminate a DBE so the Contractor can self-perform the work for which the DBE was committed, or so the Contractor can substitute another DBE or non-DBE Contractor after the contract award.

Before submitting a request to terminate or substitute a DBE to the Department, the Contractor must first provide written notice to the DBE, with a copy of the notice to the DBE Compliance Officer, of the Contractor's intent to request to terminate or substitute, and the reason for the request.

The Contractor must give the DBE 5 calendar days to respond to the notice and advise the Department and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Department should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g. safety), the Department may provide a response period shorter than 5 calendar days.

When a DBE is terminated or fails to complete its work on the contract for any reason, the Contractor must make good faith efforts to replace the committed DBE with another DBE. The Contractor must make efforts to find another DBE to

perform the same amount of work under the contract as the DBE that was terminated. The letter to the Department requesting termination or substitution must include the name of the DBE and dollar amount of the replacement DBE. If the Contractor is unable to find another DBE, the Contractor must provide the names of the DBEs it contacted and reason why they were unable to use those DBEs.

If the Contractor does not utilize or pay DBEs as required, liquidated damages will be assessed as specified in Section VII of this special provision. In addition, if the Contractor is found to have knowingly and willingly attempted to circumvent the DBE contract provisions, the Department will not make payment for the work that was originally committed to a DBE and the Department may impose sanctions referred to in Section IV of this special provision.

The Contractor does not need Department approval to terminate or substitute a DBE under the following circumstances:

- The DBE is being used on a contract with a "Specified Goal" however the DBE was not listed as a DBE commitment on form DOT-289R/C.
- The DBE was listed as a commitment on a "Not Specified" DBE goal contract on form DOT-289R/N.

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**SPECIAL PROVISION FOR
EEO AFFIRMATIVE ACTION REQUIREMENTS ON
FEDERAL AND FEDERAL-AID CONSTRUCTION CONTRACTS**

SEPTEMBER 1, 1997

APPENDIX A

Notice or Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR MINORITY PARTICIPATION FOR EACH TRADE

Aurora	0.8%	Fall River	7.9%	Marshall	1.3%
Beadle	0.8%	Faulk	1.3%	Meade	3.4%
Bennett	7.9%	Grant	1.3%	Mellette	7.9%
Bon Homme	1.2%	Gregory	0.8%	Miner	0.8%
Brookings	0.8%	Haakon	7.9%	Minnehaha	1.2%
Brown	1.3%	Hamlin	1.3%	Moody	0.8%
Brule	0.8%	Hand	0.8%	Pennington	3.4%
Buffalo	7.9%	Hanson	0.8%	Perkins	7.9%
Butte	7.9%	Harding	7.9%	Potter	7.9%
Campbell	7.9%	Hughes	7.9%	Roberts	1.3%
Charles Mix	0.8%	Hutchinson	0.8%	Sanborn	0.8%
Clark	1.3%	Hyde	7.9%	Shannon	7.9%
Clay	1.2%	Jackson	7.9%	Spink	1.3%
Codington	1.3%	Jerauld	0.8%	Stanley	7.9%
Corson	7.9%	Jones	7.9%	Sully	7.9%
Custer	7.9%	Kingsbury	0.8%	Todd	7.9%
Davison	0.8%	Lake	0.8%	Tripp	7.9%
Day	1.3%	Lawrence	7.9%	Turner	0.8%
Deuel	1.3%	Lincoln	0.8%	Union	1.2%
Dewey	7.9%	Lyman	7.9%	Walworth	7.9%
Douglas	0.8%	McCook	0.8%	Yankton	1.2%
Edmunds	1.3%	McPherson	1.3%	Ziebach	7.9%

GOALS FOR FEMALE PARTICIPATION IN EACH TRADE

Statewide - - - - - 6.9%

These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project

for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor when requesting permission to sublet shall provide written notification to the Department of Transportation as specified in Section 8.1 of the Standard Specifications for Roads and Bridges. When the subcontract is in excess of \$10,000, the request for permission to sublet shall list the name, address and telephone number of subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed. The Department of Transportation will then provide written notification to the Director of the Office of Federal Contract Compliance Programs through proper channels.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is as shown by county designation on the Title Sheet of the plans.

APPENDIX B

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (I) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (II) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (III) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (IV) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed

as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office, from Federal procurement contracting officers or from the South Dakota Department of Transportation. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or if referred, not employed by the Contractor, this shall be documented in the file with the reason thereof, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy

with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group, has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply,

however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS
FHWA 1273 (MAY 1, 2012)**

OCTOBER 21, 2019

The following are amendments to the above contract provisions.

Section I.4.

Delete this section and replace with the following:

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a Federal-aid construction project unless it is labor performed by convicts who are on parole, supervised release, or probation.

Section IV.

Delete the first paragraph and replace with the following:

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway and to all portions of Transportation Alternatives Program (TAP) funded projects.

Section IV.3.b.(1)

Delete the first six sentences and replace with the following:

The Contractor and each related subcontractor must submit weekly, for each week in which any contract work is performed, an electronic certified weekly payroll report. The payroll report must be submitted electronically to the Elation System website. The Elation System website can be accessed by logging onto the State of South Dakota's single sign-on website at <https://mysd.sd.gov/> or can also be accessed at <https://elationsys.com/>. First time users will need to use the Promotion Code SDDOT-19. The payroll report must be submitted within fourteen (14) calendar days after the end of the workweek. The payroll reports submitted shall set out accurately and completely all the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i). Weekly transmittals must include an individually identifying number for each employee, such as the last four digits of the employee's social security number, but these weekly transmittals must not include full social security numbers or home addresses. The Contractor is responsible for the submission of certified payroll reports by all subcontractors.

Section IV.3.b.(2)

Delete the first paragraph and replace with the following:

Each certified weekly payroll report must include the most recent South Dakota Department of Transportation (SDDOT) Statement of Compliance Form, signed by the Contractor or related subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract. The Instructions for the SDDOT Statement of Compliance Form are found at <https://dot.sd.gov/doing-business/contractors/labor-compliance/certified-payrolls-let-after-6/5/19>. The SDDOT will not accept any payroll report which does not include the most recent SDDOT Statement of Compliance Form. The SDDOT Statement of Compliance Form must certify the following:

Section IV.3.b.(3)

Delete this paragraph and replace with the following:

The weekly submission of a properly executed SDDOT Statement of Compliance Form shall satisfy the requirement for submission of the "Statement of Compliance Form" required by paragraph 3.b.(2) of this section.

Section IV.3.b.(4)

Delete this section and replace with the following:

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

Section IV.4.a

Delete the first sentence of the third paragraph and replace with the following:

Every apprentice must be paid the higher of the Common Laborer wage rate contained in the bid documents or the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

* * * * *

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CARGO PREFERENCE ACT**

JANUARY 20, 2016

In accordance with the Cargo Preference Act of 1954 and 46 CFR 381.7 the following shall apply:

A. Agreement Clauses - Use of United States-flag vessels:

1. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50% of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.
2. Within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A.1 of this special provision shall be furnished to both the Engineer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

B. Contractor and Subcontractor Clauses - Use of United States-flag vessels, the Contractor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States. a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph B.1 of this special provision to both the Department

(through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

* * * * *

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION REGARDING
MINIMUM WAGE ON FEDERAL-AID PROJECTS**

OCTOBER 24, 2019

This proposal contains a copy of the most recent United States Department of Labor (USDOL) Davis-Bacon Act Wage Decision.

The Contractor and each related subcontractor will pay their respective employees not less than the USDOL minimum wage for each work classification an employee actually performs at the site of the work.

The Contractor and each related subcontractor must submit weekly, for each week in which any contract work is performed, an electronic certified weekly payroll report. The payroll report must be submitted electronically to the Elation System website. The Elation System website can be accessed by logging onto the State of South Dakota's single sign-on website at <https://mysd.sd.gov/> or can also be accessed at <https://elationsys.com/>. First time users will need to use the Promotion Code SDDOT-19. The payroll report must be submitted within fourteen (14) calendar days after the end of the workweek. The payroll reports submitted shall set out accurately and completely all the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i). Weekly transmittals must include an individually identifying number for each employee, such as the last four digits of the employee's social security number, but these weekly transmittals must not include full social security numbers or home addresses. The Contractor is responsible for the submission of certified payroll reports by all subcontractors.

Each certified weekly payroll report must include the most recent South Dakota Department of Transportation (SDDOT) Statement of Compliance Form, signed by the Contractor or related subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract. The Instructions for the SDDOT Statement of Compliance Form are found at <https://dot.sd.gov/doing-business/contractors/labor-compliance/certified-payrolls-let-after-6/5/19>. The SDDOT will not accept any payroll report which does not include the most recent SDDOT Statement of Compliance Form.

* * * * *

**Wage and Hour Division
U.S. Department of Labor (DOL)
200 Constitution Avenue, N.W.
Washington, DC 20210**

Davis-Bacon Act Wage Decisions

State: South Dakota

Construction Types: Heavy and Highway

Counties: South Dakota Statewide

General Decision Number: SD180001 Mod-1 04/06/2018 SD1

Agency:

Wage Decision Number:

Counties:

Wage Decision Date:

U.S. DOL
SD180001 SD1
SD Statewide
04/06/2018 (Mod-1)

***SUSD2018-001 03-20-2018**

LABORERS

GROUP GL1

Air Tool Operator; Common Laborer; Landscape Worker; Flagger; Pilot Car Driver;
Trucks under 26,000 GVW; Blue-top Checker; Materials Checker

GROUP GL2

Mechanic Tender (Helper); Pipe Layer (except culvert); Form Builder Tender;
Special Surface Finish Applicator; Striping

GROUP GL3

Asphalt Plant Tender; Pile Driver Leadsman; Form Setter; Oiler/Greaser

GROUP GL5

Carpenter; Form Builder

GROUP GL6

Concrete Finisher; Painter; Grade Checker

POWER EQUIPMENT OPERATORS

GROUP G01

Concrete Paving Cure Machine; Concrete Paving Joint Sealer; Conveyor; Tractor (farm type with
attachments); Self Propelled Broom; Concrete Routing Machine; Paver Feeder; Pugmill; Skid Steer

GROUP G02

Bull Dozer 80 HP or less; Front End Loader 1.25 CY or less; Self-Propelled Roller (except Hot Mix);
Sheepsfoot/50Ton Pneumatic Roller; Pneumatic Tired Tractor or Crawler (includes Water Wagon and
Power Spray units); Wagon Drill; Air Trac; Truck Type Auger; Concrete Paving Saw

GROUP G03

Asphalt Distributor; Bull Dozer over 80 HP; Concrete Paving Finishing Machine; Backhoes/ Excavators
20 tons or less; Crusher (may include internal screening plant); Front End Loader over 1.25 CY;
Rough Motor Grader; Self Propelled Hot Mix Roller; Push Tractor; Euclid or Dumpster; Material Spreader;
Rumble Strip Machine

GROUP G04

Asphalt Paving Machine Screed; Asphalt Paving Machine; Cranes/Derricks/Draglines/Pile Drivers/Shovels
30 to 50 tons; Backhoes/Excavators 21 to 40 tons; Maintenance Mechanic; Scrapers; Concrete Pump Truck

GROUP G05

Asphalt Plant; Concrete Batch Plant; Backhoes/Excavators over 40 Tons; Cranes/ Derricks/Draglines/Pile
Drivers/Shovels over 50 tons; Heavy Duty Mechanic; Finish Motor Grader; Automatic Fine Grader;
Milling Machine; Bridge Welder

TRUCK DRIVERS

GROUP GT1

Tandem Truck without trailer or pup; Single Axle Truck over 26,000 GVW with Trailer

GROUP GT2

Semi-Tractor and Trailer; Tandem Truck with Pup

ELECTRICIANS

GROUP E01

Electrician

<u>Rates</u>	<u>Fringes</u>
18.86	0.00
17.51	0.00
18.95	0.00
27.96	0.00
21.41	0.00
20.62	0.00
20.66	0.00
22.02	0.00
23.79	0.00
24.77	0.00
21.46	0.00
21.66	4.22
26.42	3.85

WELDERS – Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor contract clauses (29 CFR 5.5(a)(1)(ii)). Contractors are responsible for requesting SDDOT to secure necessary additional work classifications and rates.

*Classifications listed under an "SU" identifier were derived from survey data and the published rate is the weighted average rate based on all rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Survey wage rates are not updated and will remain in effect until a new survey is conducted.

A COPY OF THIS DOCUMENT, COLORED PURPLE, MUST BE CONSPICUOUSLY POSTED AT THE PROJECT SITE

**Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210**

Davis-Bacon Act Wage Decisions**State: South Dakota****Construction Types: Heavy and Highway****Counties: South Dakota Statewide****General Decision Number: SD180001 Mod-1 04/06/2018 SD1**

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In the listing above, the "SU" identifier indicates the rates were derived from survey data. As these weighted average rates include all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of the survey on which these classifications and rates are based. The next number, 007 in this example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

For SDDOT Defined Work Classifications, please visit: <https://dot.sd.gov/doing-business/contractors/labor-compliance/defined-work-classifications-wage-requirements>

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- an existing published wage determination
- a survey underlying a wage determination
- a Wage and Hour Division letter setting forth a position on a wage determination matter
- a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
SUPPLEMENTAL SPECIFICATIONS TO
2015 STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES**

NOVEMBER 20, 2019

The Supplemental Specifications dated November 20, 2019 are in effect for and made a part of this contract.

The Supplemental Specifications may be obtained from the Department website or the local Area Office or by contacting the Operations Support Office.

Department Website:

<https://dot.sd.gov/doing-business/contractors/standard-specifications/2015-standard-specifications>

Operations Support:

605-773-3571

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
SUPPLEMENTAL SPECIFICATIONS FOR
ERRATA
TO 2015 STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES**

NOVEMBER 20, 2019

The Supplemental Specifications for Errata dated November 20, 2019 are in effect for and made a part of this contract.

The Supplemental Specifications for Errata may be obtained from the Department website or the local Area Office or by contacting the Operations Support Office.

Department Website:

<https://dot.sd.gov/doing-business/contractors/standard-specifications/2015-standard-specifications>

Operations Support:

605-773-3571

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
PRICE SCHEDULE FOR MISCELLANEOUS ITEMS**

OCTOBER 7, 2020

The following unit bid prices have been established by the South Dakota Department of Transportation Commission.

These prices will be pre-entered in the bidding package for each project or will establish a standard price to be used whenever no project contract unit price exists for that item.

Each unit price listed is considered full compensation for the cost of labor, material, and equipment to provide the item of work and/or material, complete in place, including (but not limited to) royalty, waste of unsuitable materials, equipment rental, overhead, profit, and incidentals.

Items specified in this document may be paid for on progressive estimates without the benefit of a prior approved Construction Change Order.

Specification Section Number	Specification Section Name	Item Name	Price per Item
5.8	Construction Stakes, Lines, and Grades	Engineer Directed Surveying/Staking	\$150.00/hour
7.7	Public Convenience and Safety	Water for Dust Control	\$25.00/M.Gal
9.3	Payment for extra haul of Materials	Extra Haul	\$0.20/ton mile (Truck) or \$0.08/ cubic yard station (Scraper)
120.5 A.5.	Roadway and Drainage Exc. & Emb.	Unclassified Excavation, Digouts	\$11.00/cu.yd.
120.5 H.	Roadway and Drainage Exc. & Emb.	Extra Haul	\$0.20 /ton mile (Truck) or \$0.08 /cubic yard station (Scraper)
120.5 I.	Roadway and Drainage Exc. & Emb.	Water for Embankment	\$25.00/M.Gal
421.5	Undercutting Pipe & Plate Pipe	Undercutting Culverts	\$15.00/cu.yd.

510.5 D.	Timber, Prestressed, and Steel Piles	Timber Pile Splice	\$750.00/each
		Steel Pile Splices (*All Weights)	Splice made before either of the pieces has been driven.
		8 HP*	\$150.00/each
		10 HP*	\$175.00/each
		12 HP*	\$200.00/each
		14 HP*	\$225.00/each
		Steel Pile Splices (*All Weights)	Splice made after one of the pieces has been driven.
		8 HP*	\$325.00/each
		10 HP*	\$425.00/each
		12 HP*	\$525.00/each
		14 HP*	\$600.00/each
510.5 E.	Timber, Prestressed, and Steel Piles	Pile Shoes (Timber Pile)	\$150.00/each
510.5 H.	Timber, Prestressed, and Steel Piles	Pile Tip Reinforcement (Steel Pile)	
		10" HP Tip Reinforced	\$160.00/each
		12" HP Tip Reinforced	\$185.00/each
		14" HP Tip Reinforced	\$225.00/each
601.5	Haul Roads	Granular Material	\$20.00/ton
601.5	Haul Roads	Asphalt Concrete (including asphalt)	\$120.00/ton
601.5	Haul Roads	Cover Aggregate	\$45.00/ton
601.5	Haul Roads	Asphalt for Prime	\$925.00/ton
601.5	Haul Roads	Asphalt (Tack, Flush & Surface Treatment)	\$600.00/ton
601.5	Haul Roads	Water	\$25.00/M.Gal
601.5	Haul Roads	Dust Control Chlorides	\$0.45/lb
634.5	Temporary Traffic Control	Flagging	\$30.37/hour
634.5	Temporary Traffic Control	Pilot Car	\$43.87/hour

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
REGARDING
STORM WATER DISCHARGE
TO WATERS OF THE UNITED STATES
WITHIN INDIAN RESERVATIONS**

MAY 3, 2013

In compliance with the provisions of the Clean Water Act as amended by the Water Quality Act of 1987, the State of South Dakota has been issued Permit No. SDR12#### or NDR12#### "NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT FOR DISCHARGES FROM CONSTRUCTION ACTIVITIES". This permit authorizes the discharge of storm water in accordance with the conditions and requirements set forth in the permit.

The Contractor, by submitting a bid or proposal, certifies the following:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

A copy of the full version of the Environmental Protection Agency National Pollutant Discharge Elimination System General Permit for Discharges from Large and Small Construction Activities, dated 02/16/2012 must be posted on the job site. The permit is available for downloading and printing from the US EPA website:

http://www.epa.gov/npdes/pubs/cgp2012_finalpermit.pdf

The Contractor may also obtain a printed copy of the permit from the SDDOT Project Development office or from the SDDOT Area Office assigned to this project.

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